सत्यमेव जयते

GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.264

The Criminal Law (Amendment) Bill, 2017 (Provisions dealing with Food Adulteration)

January, 2017

Dr. Justice B.S. Chauhan
Chairman
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सत्यमेव जयते

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D.O. No.6(3)305/2016-LC(LS)

17 January 2017

Shri Ravi Shankar Prasad Ji,

The Law Commission of India is working on a Comprehensive Review of Criminal Justice System. As part of its study, the Commission is working on the need to suggest amendments to the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

That being so, in November last year, the Commission was asked by the Ministry of Home Affairs, "*to examine the amendment to section 272 of IPC*" in the light of the judgement and order of Supreme Court in ***Swami Achyutanand Tirth & Ors. v. Union of India &Ors.*** AIR 2016 SC 3626, wherein the Court held that "*as observed by this Court in the orders dated 05.12.2013 and 10.12.2014, it will be in order, if the Union of India considers making suitable amendments in the penal provisions at par with the provisions contained in the State amendments to the Indian Penal Code.*"

The Commission accordingly undertook a review of sections 272 & 273 of the IPC in view of the judgment of the Supreme Court. It studied the punishment prescribed with reference to these sections. After detailed discussions, the Commission felt that the punishment provided for is too inadequate in the present scenario. Therefore, the Commission is of the view that there must be more stringent punishment in offences relating to adulteration of food, which is a threat to human life. The Commission feels that the punishment must be seen in the light of the harm caused to the consumer by consuming adulterated food items and drinks. The Food Safety and Standards Act, 2006, may not be occupying the entire field of food adulteration and thus, would not render the provisions of sections 272 & 273 of the IPC redundant.

The issue as to whether criminal proceedings can be initiated under sections 272 and 273 of the IPC after commencement of the Act of 2006, is still under consideration of the Supreme Court. Therefore, it is not appropriate for the Commission to comment upon the matter at this stage. Nevertheless, in the light of the directions of the Supreme Court, the Commission is suggesting certain amendments to sections 272 & 273 IPC as annexed to its **Report No.264**, titled "***The Criminal Law (Amendment) Bill, 2017 (Provisions dealing with Food Adulteration)***" which is sent herewith for consideration by the Government.

The Commission would like to place on record its appreciation for the valuable advice rendered by Hon'ble Mr. Justice Pratyush Kumar, Judge, Allahabad High Court. The Commission also acknowledges the commendable assistance provided by its Consultants Shri Arijeet Ghosh and Shri Lalit Panda, at various stages of preparation of the Report.

Yours sincerely,

With Best regards,

BS Chauhan

[Dr. Justice B S Chauhan]

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Report No.264

The Criminal Law (Amendment) Bill, 2017
(Provisions dealing with Food Adulteration)

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CHAPTER-I

Background

1.1. Our increasing daily need and fast growing lifestyle has resulted in availability of innumerable 'food' and 'food products' in the market, instant food and instant cooking has become a common requirement in every household today. Regional to multinational brands of food and food products are expanding their markets day by day; and are welcomed at homes on the note of instant servings for our needs. Various processes along the way transform and modify the food product so as to enhance or customize its characteristics. This is an inexorable process linked to the increased specialisation of functions in society and cannot be reversed.

1.2. Securing the 'wholesome food' for human consumption has since long been secured through laws. Food legislations are brought into place to ensure that the acceptable minimum level of food safety is ensured; and the standards that secure such safety are strictly enforced. The ever growing food and food products market bring along with it, the greed of antisocial persons engaged in food adulteration, which is a serious crime against society. The increasing menace of food adulteration in the country is driving the citizens to health hazards that ultimately result in various ailments and even premature deaths.

1.3. The Law Commission's Report is to address such threats and covers two provisions in the Indian Penal Code 1860 (hereinafter referred to as the IPC) that deal with food adulteration: Sections 272 and 273. As this Report will briefly explain, the present framework on food safety which is enshrined in the Food Safety and Standards Act, 2006 (hereinafter referred to as the Food Act); where the food

adulteration is dealt with under the provisions of the Act by creating an offence relating to "unsafe food" and creating a basis for standard-setting in the industry.

1.4. The object of this Report is to create a uniform scheme of punishment for food adulteration offences. Most significantly, the suggested amendments aims at eliminating the low quantum of punishment provided in the IPC; and updates it to bring it in line with the provisions of the Food Act as well as the punishments as found in the amendments of the IPC made by Odisha, Uttar Pradesh and West Bengal. Appropriate amendments to the relevant Schedule of the Criminal Procedure Code are also proposed. These proposals are appended at the end of the Report as an 'Amendment Bill'.

1.5. It is necessary to present the events briefly that resulted in this project being taken up by the Law Commission. The Supreme Court judgement in *Swami Achyutanand Tirth & Ors. v. Union of India & Ors.*[1] and the Ministry of Home Affairs' reference are brought into focus to explain the objective with which the Commission undertook this study.

1.6. This Report precisely provides a description of the current framework on food safety laws in India and how they have changed, not too long ago to meet the increasing demands of food regulations keeping in view the best practices followed in the world all over. This will contextualize the IPC provisions and show/reflect the importance of the proposed changes. This role is made clear in the section immediately following the discussion on the relation between the IPC and food adulteration.

[1] AIR 2016 SC 3626.

1.7. Certain alternative proposal is presented in relation with the incoherent nature of those two sections and this is followed by a justification for the proposed application of the 'principle of proportionality' in the punishments. In a perspective, the Report is aimed at removing perceived incoherency and reinforcing the deterrent intent behind our food safety laws.

CHAPTER-II

Judgement of the Supreme Court

2. While dealing with a writ petition filed in public interest highlighting the menace of growing sales of adulterated and synthetic milk in different parts of the country and the inability of concerned State Governments and the Union to take effective measures for combating the adulteration of milk with hazardous substances, the Supreme Court (supra) directed the Central Government to come up with suitable amendments in the Food Act and the IPC. Reiterating its stance in its orders dated 5.12.2013 and 10.12.2014, the Court highlighted that, 'it was desirable to make penal provisions of IPC at par with the provisions contained in the State Amendments made by Odisha, Uttar Pradesh and West Bengal, wherein the punishment for adulteration of food and products is enhanced to imprisonment for life and also fine'.[2] Further, it suggested that it was desirable if the Union of India revisits the Food Act, revise the punishment for adulteration making it more deterrent in cases where the adulterant can have adverse impact on health.

[2] Paragraph 19 of the Judgment.

CHAPTER-III

Reference of the Proposal

3. The Law Commission of India has received from Ministry of Home Affairs, a letter dated 2.11.2016 making reference of the Supreme Court Judgement in Swami *Achyutanand Tirth & Ors. (supra)* requested the Law Commission to examine the specific issue of amending penal provisions as contained in sections 272 and 273 of IPC at par with the State Amendments made in sections 272 and 273 by the States of Odisha, Uttar Pradesh and West Bengal. In the letter, it is also stated that "many States are also contemplating amendment to the section pursuant to the court case. As the Law Commission of India is already carrying out a comprehensive review covering all aspects of criminal law so that comprehensive amendments can be made in the various laws viz. Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act, etc. It is therefore, requested that the Commission may also examine the amendment to section 272 of IPC as observed by the Supreme Court."

CHAPTER-IV

Present Framework governing Food Safety Regulation

A. Food Safety and Standards Act, 2006

4.1 In our country, there were a number of pre-constitutional and post-constitutional laws, orders, rules that aim at the protection of the consumer interests with special reference to safeguard food safety and the health of the consumer. They were introduced to complement and supplement each other in achieving total food safety and quality. However due to multiplicity in the specifications/standards in different Acts/Orders, and administration by different Departments and agencies, there were implementation problems and a lack of importance given to safety standards over a period of time. The food industries were facing problems as different products were governed by different orders, rules and regulations in the Country which needed consolidation.

4.2 With the aim to consolidate all the previous existing laws, the Food Act was enacted by Parliament which establishes a single reference point for all matters relating to food safety and standards, by moving from multi- level, multi-departmental control to a single line of command.[3] To this effect, the Food Act establishes an independent statutory Authority – the Food Safety and Standards Authority of India (Food Authority),[4] which has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption.

[3] Please see: http://www.Food Acti.gov.in/home/about-us/introduction.html (last accessed on 22nd December, 2016).

[4] Section 4, The Food Safety and Standards Act, 2006.

4.3 The Food Act which came into effect in 2011, subsumes various central Acts like the Prevention of Food Adulteration Act, 1954 (37 of 1954); the Fruit Products Order, 1955; the Meat Food Products Order, 1973; the Vegetable Oil Products (Control) Order, 1947; the Edible Oils Packaging (Regulation)Order, 1998; the Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order, 1967; the Milk and Milk Products Order, 1992 and also any order issued under the Essential Commodities Act, 1955 (10 of 1955) relating to food.[5]

4.4 For the purposes of the enforcement of the Food Act, the Food Authority along with the State Food Safety Authorities are responsible for monitoring and verifying the relevant requirements under the Act and its enforcement.[6] The Act also provides for the appointment of a Commissioner of Food Safety of the State by the respective State Governments for efficient implementation of food safety and standards and other requirements laid down under the Food Act and the rules and regulations made thereunder.[7] The Commissioner of Food Safety for each State is responsible for appointing Food Safety Officers for local areas who are responsible for enforcement and execution of the provisions of the Act.[8] The Food Safety Officer also has been entrusted with the power of search, seizure, investigation as well as prosecution for the purposes of enforcement of the provisions of the Food Act.[9]

4.5 The Food Act in chapter IX deals with offences and penalties which provides for punishments for contravention of the provisions of the Act. While section 48 describes how an offence may be committed in regard to food adulteration, sections 50 to 67 prescribes punishments in case an offence is committed. In particular, section 59 prescribes punishment for unsafe food. Section 3(1)(zz) defines

[5] Please refer to Sections 89 [Overriding effect of this Act over all other food related laws], 97 (1) & 97 (2) [Repeal and savings] of the Act.
[6] Chapter VII, Section 29 (1) & (2), Food Safety and Standards Act, 2006.
[7] Section 30 (1), Food Safety and Standards Act, 2006.
[8] Section 37, Food Safety and Standards Act, 2006.
[9] Section 41, Food Safety and Standards Act, 2006.

"unsafe food" as any article of food whose nature, substance or quality is so affected as to render it injurious to health. It provides for a graded system of punishment which is mentioned as under:

> Section 59- "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,-
>
> (i) 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;
>
> (ii) 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;
>
> (iii) 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;
>
> (iv) 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."

4.6 The Food Act also provides for adjudication by an Adjudicating Officer[10] and establishes an alternative forum known as the Food Safety Appellate Tribunal.[11] The procedures to be followed and the powers of the adjudicating officer as well as the Appellate tribunal are provided for in the Act[12].

4.7 The Food Authority has the power, with the prior approval of the Central Government and after pre-publication, by notification, to make regulations consistent with the Food Act and the rules made

[10] Section 68, Food Safety and Standards Act, 2006.
[11] Section 70, *ibid.*
[12] Sections 71-80 - Chapter X, *ibid* .

there under to carry out the provisions of the Act.[13] For the same, the Food Authority has made the Food Safety and Standards Rules, 2011 as well as the following regulations:

1. The Food Safety and Standards (Licensing and Registration of Food businesses) Regulation, 2011
2. The Food Safety and Standards (Packaging and Labelling) Regulation, 2011
3. The Food Safety and Standards (Food Product Standards and Food Additives) Regulation, 2011
4. The Food Safety and Standards (Prohibition and Restriction on Sales) Regulation, 2011
5. The Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011
6. Food Safety and Standards (Laboratory and Sampling Analysis) Regulation, 2011

B. Food Adulteration and the Indian Penal Code

4.8 The IPC in chapter XIV (Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals) prescribes punishment for adulteration of food or drink intended for sale (Section 272) and sale of noxious food or drink (Section 273).

Section 272 states that:

> "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."

Section 273 states that:

> "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

[13] Section 92, Food Safety and Standards Act, 2006.

> 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."

4.9 Subsequently, the States of Uttar Pradesh, West Bengal and Odisha have made amendments to sections 272 and 273 wherein the term of imprisonment which could have been extended up to 6 months has been substituted with imprisonment for life along with fine. The State Amendments are produced as under:

(1) <u>State of Uttar Pradesh</u>

In sections 272, 273, 274, 275 and 276 of IPC for the words "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" the following shall be substituted, namely:-

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the court may, for adequate reason to be mentioned in the judgement, impose a sentence of imprisonment which is less than imprisonment for life."[14]

(2) <u>State of West Bengal</u>

In its application to the State of West Bengal in sections 272, 273, 274, 275 and 276 of IPC for the words "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" the following shall be substituted, namely:-

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgement. impose a sentence of imprisonment which is less than imprisonment for life."[15]

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[14] U.P. Act No. 47 of 1975.

[15] W.B. Act No. 42 of 1973, w.e.f. 29th. April, 1973.

(3) State of Odisha

In its application to the State of Odisha in sections 272, 273, 274, 275 and 276 of IPC for the words "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" the following shall be substituted, namely:-

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgement impose a sentence of imprisonment which is less than imprisonment for life."[16]

C. Certain words and expressions defined only in the Food Act

4.10 An article of food shall be deemed to be adulterated---

Section 3(1)(zz) of the Food Act defines when an article of food shall be deemed to be "unsafe food" -

'(zz) "unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health:

(i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substances; or

(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or

(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

[16] Orissa Act 3 of 1999, sec. 2, w.e.f. 27th January, 1999.

(v) by addition of a substance directly or as an ingredient which is not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.'

4.11 The words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

4.12 The necessity of highlighting this nexus between the repealed Prevention of Food Adulteration Act, 1954 (hereinafter referred to as PFA Act) and sections 272 & 273 of IPC is to bring forward the issue that the Food Act (which repeals the PFA Act), does not provide definitions for the above mentioned terms and instead defines the words 'adulterant'[17] and 'unsafe food'[18] which do not find any mention in Sections 272 and 273 of IPC.

[17] Section 3 (1) (a), Food Safety and Standards Act, 2006.
[18] Section 3 (1) (zz), Food Safety and Standards Act, 2006.

4.13 The Supreme Court in the matter of *Swami Achyutanand Tirth & Ors. (supra)* while pronouncing its judgement refers to the interplay of section 59 of the Food Act and sections 272 & 273 of the IPC. It refers to the judgement passed by the High Court of Judicature at Allahabad in the matter of *M/s Pepsico India Holdings (Pvt) Ltd. & Anr.v. State of U.P. & Ors.*[19] wherein the Court stated that invoking of sections 272 & 273 of IPC in relation to adulteration of food was considered to be unjustified as the authorities could have taken action only under the Food Act. However, the Supreme Court decided not to go into the said question at this stage and delisted the appeals preferred by the State of U.P in the above mentioned matter (Criminal Appeals No. 476-478 of 2012) which are pending and thus the matter is sub judice.[20]

4.14 In the matter of *M/s Pepsico India Holdings (Pvt) Ltd. & Anr.(supra),* petitioners therein questioned the validity of the Orders issued by the State Government directing the police to register cases and initiate action under Sections 272/273 IPC *inter alia* on the grounds;

(i) The authorities had chosen to invoke Sections 272/ 273 IPC without even waiting for the report of the public analyst. Since the alleged offence as disclosed in the FIR are covered under the provisions of Food Act and as such there cannot be any violation of sections 272/273 IPC, and

(ii) There are certain ingredients which are required for constituting an offence under Section 272 IPC. Similarly Section 273 requires certain ingredients to be fulfilled before the offence of adulteration can be said to be made. The ingredients are, 'that somebody selling food article or drinks which has been rendered noxious/ unfit for consumption', with such knowledge or having reasons to believe that the same is a noxious food item. To put it differently, Sections 272/273 IPC are only attracted if it is shown that the adulteration is deliberate, intentional or with knowledge.

[19] 2011 (2) Crimes 250, 2010(6)ALJ 30.
[20] Paragraph 13, of *Swami Achyutanand Tirth* Judgment.

(iii) A special law prevails over general law. Provisions of PFA Act, 1954 on coming into force eclipsed the provisions of Sections 272 & 273 IPC.

(iv) The Food Act, repealed the PFA Act and occupied the entire field in respect of adulteration of food and drinks for sale. The Food Act, provisions would operate and provisions of Sections 272 & 273 were not attracted, and

(v) There was nothing on record to show that food material, seized, was meant for sale, rather a board "not for sale" had been put there.

4.15 The Allahabad High Court upheld the said contentions relying upon Section 5 of the IPC[21] and observed;

> "Section 272 IPC, reproduced hereinabove is attracted when a person adulterates an article of food with the intention to sell such an article or knowing that it is likely that the article will be sold as food or drink. In the instant case, there is no allegation in the FIR that the petitioner-company or its employees or agents had kept its products with the intention to sell the same or knowing that the products are likely to be sold as food or drink or that the said products were exposed or offered for sale. The definite stand of the company was the articles seized were kept in the godown where even a board "not for sale" was also hanging at the time when the search was conducted.....
>
> One thing is crystal clear that nothing in the Penal Code shall affect any provisions of any Special Act and when for any act or omission in a particular subject, a special set of rules have been framed, in that situation, the provisions of the IPC have to be ignored or overlooked. In the cases at hand FIRs have been registered under Sections 272 and 273 IPC pursuant to the impugned Government Order although adulteration of Food Stuff is

[21] Section 5 states that: Certain laws not to be affected by this Act- Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

covered by a Special Act i.e. The Food Safety and Standards Act, 2006."

4.16 It also added that:

> "...PFA Act was enacted for the prevention of adulteration of food, being a special Act, it **eclipsed** Sections 272 and 273 of IPC. In other words, the said Act made Sections 272 and 273 of IPC **redundant** as punishment provided under the PFA Act was much more (sic) man what was provided under Sections 272 and 273 IPC." (Emphasis added)

4.17 The Court concluded observing:

> "...that for adulteration of food or misbranding, after coming into force of the provisions of FSSA vide notification dated 29th July, 2010, the authorities can take action only under the FSS as it postulates an over-riding effects over all other food related law including the PFA Act...Therefore, invoking Sections 272 and 273 of the Indian Penal Code in the matter relating to adulteration of food pursuant to the impugned Government order is wholly unjustified and non est. Furthermore, it appears that the impugned Government Order has been issued without application of proper mind and examining the matter minutely and thus the State Government travelled beyond the jurisdiction."

4.18 The aforesaid observations / findings make it clear that, firstly 'the subject matter of prosecution was not for sale' and secondly, the provisions of Food Act would prevail and the procedure prescribed under the State Act would be applicable as the provisions of s.272 and s.273 IPC stood eclipsed.

4.19 It is a legal proposition that there is a presumption against an implied repeal.[22] Whenever the legislature enacts a statute, it is

[22] *Municipal Council Palai v. T.J. Joseph & Ors.* AIR 1963 SC 1561; *Municipal Corporation of Delhi v. Sheo Shankar,* AIR 1971 SC 815; *Justiniano Augusto De PiedadeBarreto v. Antonio Vicente Da*

presumed that it proceeds with legislation with a complete knowledge of all existing laws pertaining to the same subject and the failure to add any particular law or part thereof in a repealing clause, would indicate that the intent was not to repeal a particular existing legislation or a part thereof. In case the two laws – earlier and later enacted laws – cannot stand together, the implied repeal may be inferred for the reason that the later laws abrogate earlier contrary laws. It is to be kept in mind that the repugnancy between the two statutes must exist in fact and not depend merely on a possibility.

4.20 It is a well-established principle that a special Act shall prevail over a general Act. It provides that the 'provisions' more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature provided that the specific or special statute clearly includes the matter in controversy. This doctrine envisages the same as *generalia specialibus non derogant* (the provisions of a general statute must yield to those of a special one).

4.21 Where the special subsequent legislation is a complete code dealing with the entire subject matter, it will exclude the provision of a general law.[23]

4.22 The Food Act puts on guard any running food industry from indulging into any activity that may be detrimental to public health and safety. More so, the Food Act is still in the preliminary stage of

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Fonseca, AIR 1979 SC 984; *R.S. Raghunath v. State of Karnataka,* AIR 1992 SC 81;*Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors.*, AIR 1986 SC 1043; *Kanwar Lal v. IInd Additional District Judge, Nainital,* AIR 1995 SC 2078; *Syndicate Bank v. Prabha D. Naik,* AIR 2001 SC 1968; *Union of India v. Venkateshan S.*, AIR 2002 SC 1890; *D.R. Yadav v. R.K. Singh,* AIR 2003 SC 3935; and *Lal Shah Baba Dargah Trust v. Magnum Developers & Ors.*, AIR 2016 SC 381.

[23] *Secretary of State for India, in Council v. Hindustan Cooperative Insurance Society Ltd.*, AIR 1931 PC 149; *Sriram Mandir Sanstha v. Vatsalabai*, AIR 1999 SC 520; *Jeevan Kumar Raut & Anr. v. Central Bureau of Investigation* AIR 2009 SC 2763; *Jamruddin Ansari v. Central Bureau of Investigation & Ors.* (2009) 6 SCC 316; and *Commercial Tax Officer Raj. v. M/s. Binani Cement Ltd. & Anr.*, 2015 (3) SCR 1.

implementation. The powers of the police under the Food Act will have to be reviewed to make its provisions more effective. In view of the above, if the Food Act is compared with sections 272 and 273 of IPC, the following picture emerges:

Sl. No.	Basis of differentiation	the Food Act	IPC
1.	Object	To regulate food industry as reflected from the long title, provisions contained in section 2 of the said Act and provisions mentioned thereinafter indicating the object underlying the Act.	These provisions have been enacted for protecting public health and safety
2.	Nature	Most of the provisions are regulatory to streamline the food industry and improve quality of food articles. Its contraventions have been made offences but from the scheme of the Act, it reflects that the making of such offences is incidental in nature which is to achieve the object of the Act.	Preventive and deterrent.
3.	Procedure	In Food Act, for enhancing quality of food articles, elaborate scheme has been given. For bringing awareness, emphasis has been laid on publicity and preventive measures and contraventions have been taken note of as a mechanism to fulfil the above.	Prompt action by the police on spot to prevent mass mishappening.
4.	Target Group	In view of the provisions contained in section 3 (n), (o) and (zd), manufacturers and persons connected therewith, as also food operators including organized vendors are subject to the provisions contained in Food Act, especially the penal ones.	Any person.

5.	Nature of the offence	Under section 69 of Food Act, the offences are compoundable. It shows offences have been created for brining improvement in the quality of food articles.	Under section 320 of Cr.PC, these sections do not find place. It shows that these offences are against the State and society at large.
6.	Effectiveness	The Food Act aims to improve the quality of food articles and conspicuously it is silent about arrest / detention of the offender and grant of bail to such an accused irrespective of seriousness of the offence.	Under the provisions of Cr.PC, the offence is cognizable. Police can take prompt action, arrest the accused, keep him in custody and he can be detained in jail till the bail is granted.

CHAPTER- V

Proportionality of Punishments in Sections 272 and 273 of the IPC

5.1 In comparison to the Food Act, the IPC prescribes inadequate punishments firstly for adulteration that results in making food articles noxious and secondly for actual sale of noxious food articles. The inadequacy of the quantum of punishment prescribed in the Code necessitated the present reform initiative. Given the importance of hygienic, nutritious food for the maintenance of healthy lives, it would appear that the maintenance of its safety is essential to public health in a commercialized world where individuals obtain their nutrition from food articles produced by others. A legal system must be comprehensive enough to meet the demands of this significant health and other social issue, providing protection against anti-social elements endangering health and human lives by adulteration.

5.2 The threat to the safety of food is its adulteration by individuals for profit and the mode of defence against this threat is the effective criminal justice system equipped with penal provisions for such acts. Much is written about the appropriate method by which penalties should be provided for a criminal legislation. The law generally provides ample scope for discretion on the part of judges to modulate punishment to meet the peculiar circumstances of each case. In some instances, however, the penal provisions are made more restrictive so that the circumstances under which punishments are inflicted are laid down in the law itself. This limitation on judicial discretion is aimed to ensure that a vital message of deterrence goes to society, undiminished by any circumstance which may be put forward for lenient sentencing. In such instances, the law prescribes criteria that must be met for different ranges of punishment and streamlines the law for its effective application by foreclosing the scope of consideration of these circumstances in sentencing.

5.3 In our country, the foremost aide in determining the appropriate quantum of punishment is the judicial decisions that has evolved in course of time. The Law Commission proposes modification of Sections 272 and 273 of the IPC so as to bring the penal framework in it on par with the existing punishments scheme provided in the Food Act and the State Amendments to the Code. Whereas the State Amendments made in section 272, 273 of the IPC enhance the overall quantum of punishment, the proposal in this Report is the prescription of punishment that is graded according to the nature of the act (intentional or otherwise) and the extent of harm suffered by the victims of adulterated food. This is apposite, as merely raising the overall punishment may leave the matter free for courts to adopt lenient or otherwise attitudes from time to time. The State amendments do make an attempt to restrain such attitudes. We may, for example, see the Odisha amendment, which reads as follows:

> In section 272 for the words "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", the following shall be substituted, namely:—
>
> "shall be punished with imprisonment for life and shall also be liable to fine:
>
> Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment which is less than imprisonment for life."[24]

The Uttar Pradesh and West Bengal amendments to section 272 of IPC run along the same lines.

[24] Orissa Act 3 of 1999, sec. 2 (w.e.f. 27-1-1999).

5.4 On examination of the issue the law Commission is of the view that the appropriate punishment scheme to be adopted is, the one that exist in section 59 of the Food Act. The State amendments do raise the overall limit of punishments but the mode of restraining leniency does not create an appropriate framework. The individualisation of punishment require drawing a balance between 'the punishment' with 'the gravity of the offence', designing the penalties as per the social challenges that the offences may raise. The governing principle in this area is the principle of proportionality of punishments. By prescribing a maximum punishment of life imprisonment and requiring courts to give "adequate and special reasons" for deviation from the same, the provisions of the State amendments would push up the aggregate quantum of sentences for this crime. Moreover, by leaving open the range of punishment from few months all the way up to life imprisonment with no guiding principle except the words "adequate and special reasons", the provision may allow for the evolution of an alternative punishment framework in which case law could fix upon various contingencies that may be used as mitigating factors. Therefore, as stated above, there is a clear requirement that the relevant provisions must have enhanced punishments that are meted out with certainty so that the required deterrent effect persists.

5.5 The 'principle of proportionality' works side by side with the principle of deterrence by making clear the situation and circumstances under which leniency of punishment is to be adopted. The listing of punishments in the proposed amendments to Sections 272 and 273 is as follows:

> "(i) where such adulteration 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;

(ii) where such adulteration results in 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;

(iii) where such adulteration results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which shall not be less than five lakh rupees;

(iv) where such adulteration 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:

Provided that the court may, for adequate reason to be mentioned in the judgement, impose a sentence of imprisonment which is less than imprisonment for life:

Provided further that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided also that any fine imposed under this section shall be paid to the victim.".

5.6 The quantum of imprisonment and fine both enhances as the gravity of the harm arising from the offence rises. There is no denial of the fact that prescribing the "appropriate penalty" is a very complex and difficult tasks. However, in view of the demands of society, the law must fix a particular criteria as the foremost principle guiding the quantum of harsher punishment. In such a case, the gravity of harm from the offence has been chosen as the appropriate criteria; and the intent is to put individuals on guard that their act would be measured in light of the consequences that may arise from them. The Supreme

Court has made extensive reference to appropriate sentencing and the role of proportionality in sentencing. Here, we may look into extracts from judgements that the Commission has considered in adopting the abovementioned punishment scheme.

5.7 In *Alister Anthony Pareira v. State of Maharashtra*,[25], the Apex Court was considering the enhancement of sentence for an offence under Section 304 Part II. It stated, regarding the method to be adopted:

> "The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.
>
> The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.".

5.8 It may be relevant to say that without any legislative guidance, the courts usually consider a wide range of circumstances in determining the appropriate penalty. This proposition, as well as the requirement that all relevant criteria be considered thoroughly, may however be taken care of by the legislature to create adequate deterrence through certainty of punishments.

5.9 The judicial and legislative search for appropriate penalties in the case of intractable and grave crimes like rape is instructive. In the

[25] AIR 2012 SC 3802.

case of *State of Karnataka v. Krishnappa,*[26], the Apex Court has stated:

> "The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. Socio-economic status, religion, race, caste, or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstance bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crimes of rape on innocent helpless girls of tender years as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court.".

5.10 Such expositions are significant because the set of criteria that courts have found to be relevant to the question of sentencing has always been limited to ensure that irrelevant considerations do not result in uncertain, variable punishments that arbitrarily allow some perpetrators to go scot-free; while others are greeted with heavier burdens. It is also significant that the punishment is more individualized to the characteristics of the offence than the characteristics of the perpetrator. This operation of limiting matters of relevance to the quantum of punishment may be taken forward so that only the most relevant facts regarding the gravity of the offence hold sway over other considerations.

[26] AIR 2000 SC 1470.

5.11 This offence-centric approach to punishment may also be seen in allied jurisprudence regarding probation, for example in *Dalbir Singh v. State of Haryana,*[27]:

> "Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence.
>
> .....
>
> In *State of Gujarat v. Jamnadas G. Pabri and Ors.* [1975] 2 SCR 330 a three Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in paragraph 21 thus:
>
>> Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view'; 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle conductive to special advantage rather than to what is universally right' (see Webster's New International Dictionary).
>
> 10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

[27] AIR 2000 SC 1677.

5.12 *State of Uttar Pradesh v. Sanjay Kumar,*[28] is yet another case of the Supreme Court that presents a clear picture of the role of sentencing policies:

> "The principle of proportionality, ..., prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus, the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.
>
> Ultimately, it becomes the duty of the courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, etc. The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise."

5.13 Articulating upon the policy surrounding death sentence and life imprisonment punishments, the case explains the objective for guidelines to sentencing. In doing so, it also explains the aspect of criminal justice that allows it to reflect the public nature of the consequences of criminal activity. It is difficult to gauge the extent of damage caused by a crime to society as a whole; and yet, this very public effect must be considered in determining punishments. Where the public abhorrence for a crime is significantly higher, sentencing

[28] (2012) 8 SCC 537.

policy should be moulded to reflect the source of the abhorrence. In the instance of food adulteration, it is the risk that such offence creates for all persons. Those who adulterate food often do so behind a perverse veil of ignorance that makes their victims into faceless, unseen sources of profit. By linking the punishment to the gravity of the injury resulting from the adulteration, the proposed provision brings home to the criminal the reality of the consequences of crime.

5.14 The objective in all such endeavours has been to bolster the deterrent effect of the punishment. The inadequacy of the judicial response to a particular form of crime is difficult to gauge, when working case to case, as the effects of leniency are seen finally when crime levels as a whole are altered due to encouragement or discouragement of criminals. Such foreclosure of lenient judicial behaviour through the application of proportionality was pointed out by the Supreme Court in *State of Madhya Pradesh v. Babulal & Ors.*[29], later reiterated in *State of Madhya Pradesh v. Surendra Singh,*[30]:

> "that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. The most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind the social interest and consciousness of the society. It is a mockery of the criminal justice system to take a lenient view showing misplaced sympathy to the Accused on any consideration whatsoever including the delay in conclusion of criminal proceedings. The Punishment should not be so lenient that it shocks the conscience of the society being abhorrent to the basic principles of sentencing.
>
> Thus, it is the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser

[29] (2013) 12 SCC 308.
[30] (2015) 1 SCC 222.

sentence encourages a criminal and as a result of the same society suffers.”.

5.15 A leading case on the matter is *Sevaka Perumal, etc. v. State of Tamil Nadu,*[31] which makes an illuminating discussion on the social function of punishments. The case draws our attention to the existing and felt needs of society with regards to a particular crime:

> “The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.
>
> …
>
> Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard

[31] (1991) 3 SCC 471.

to the nature of the offence and the manner in which it was executed or committed etc."

5.16 The above proposition is reproduced in *Shailesh Jasvantbhai & Anr. v. State of Gujarat & Ors.*[32] which further elaborates upon the principle of proportionality and also presents an incisive and sincere examination of judicial discretion which is ordinarily a necessary evil:

> "After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCG Dautha v. State of California (402 US 183: 28 L.D. 2d 711) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.".

5.17 A similar view has been reiterated in *Bantu v. State of U.P*[33]. In the case of *State of Punjab v. Bawa Singh,*[34] the significance of the burden of judicial discretion in sentencing is highlighted and, relying upon the judgment in *Hazara Singh v. Raj Kumar,*[35] the importance of the principle of proportionality in alleviating that burden is also set out.

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[32] (2006) 2 SCC 359.
[33] 2008 (10)SCALE 336.
[34] (2015) 3 SCC 441.
[35] (2013) 9 SCC 516.

5.18 Similarly, the Supreme Court in *Jameel v. State of Uttar Pradesh*[36], also describes the process of proportional sentencing when it explains that "*[b]y deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be*." It further highlights the relevant criteria and facts that are significant in carrying out this modulation process.

5.19 These cases all raise the important question of the relationship between the demands of a deterrent theory of criminal justice and a principle of proportionality. The Supreme Court in *State of Punjab v. Prem Sagar & Ors.*[37] while dealing with the case affecting the public health referred to the object of enacting Article 47 of the Constitution and held:

> "There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.".

5.20 Arguably, the two principles are not in opposition to each other and should indeed be applied together. After all, the measure of a proportionate response to crime cannot be taken with a blinkered view only to the specific circumstances of a case but keeping in mind the effect of the crime upon society, specifically the deterrent effect. This form of proportionality ensures that punishments are meted out in a forward-looking manner. Nonetheless, it is true that proportionality forms an alternative to a uniformly harsh policy aimed purely at deterrence. This is, however, eschewed for a more measured response because, as noted in *Shailesh Jasvantbhai*, "uniformly disproportionate punishment has some very undesirable practical consequences". This understanding highlights the manner in which

[36] (2010) 12 SCC 532.
[37] (2008) 7 SCC 550.

uniformity of harsh punishments inequitably places the burden of deterrence on perpetrators of less grave crimes and also incentivizes petty criminals to scale up their operations as the punishment remains the same in any case.

5.21 In *Dhananjoy Chatterjee @ Dhana v. State of West Bengal*,[38] the Supreme Court has stated:

> "In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

5.22 In *Ahmed Hussein Vali Mohammed Saiyed & Anr. v. State of Gujarat*,[39], the Supreme Court explained the scope of considerations involved in terms of taking a view to the long term effects of leniency and the holistic effects on society as opposed to the individual criminal and victim:

> "…Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded

[38] (1994) 2 SCC 220.
[39] (2009) 7 SCC 254.

> for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong.".

5.23 In *Guru Basavaraj @ Benne Settapa v. State of Karnataka*,[40], the Apex Court explained the demands upon courts when faced with a question that requires them to consider the needs of society over those of particular persons:

> "The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored.".

5.24 A similar appeal is made in *Gopal Singh v. State of Uttarakhand*,[41], but is appropriately placed alongside a counterpoint on the necessity of proportionality:

> "The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles.".

5.25 In conclusion, it is clear that punishment schemes and sentencing policies must adhere to a general principle of proportionality and as such the required deterrence be achieved without arbitrary slips into leniency; and at the same time unnecessary distress is not created through uniformly high punishments.

5.26 Much of the case law makes a listing of relevant criteria to be considered when determining appropriate punishment. However, notably, the proposed amendment limits these relevant criteria and forwards the gravity of harm resulting from the offence as the foremost standard of differentiation. The reasons for this have been made clear above: the appropriate level of deterrence has not been

[40] (2012) 8 SCC 734.
[41] JT 2013 (3) SC 444.

achieved by allowing for judicial discretion and the consideration of all relevant criteria. The low quantum of punishment and uncertainty surrounding sentencing lends itself to and encourages the commission of food safety offences. Raising the overall limit of punishment cannot be enough, however, and a graded framework is hence proposed. At the same time, the relevant criteria for the quantum of the punishment have been limited so as to achieve the requisite certainty that would ensure that the increased quantum of punishment is inflicted without exceptions.

CHAPTER – VI

Incoherency in Laws

6.1 The Law Commission reviewed sections 272 and 273 of IPC to address the concern of the Supreme Court in matters relating to food adulteration. It also revisited the punishment with reference to sections 272 and 273 of IPC stipulated for food adulteration, which is not only inadequate but also incompatible in the present scenario, and thus requires to be made more stringent. The Law Commission considers that the provisions to deal with production and sale of adulterated food, which is harmful to human beings be made more stringent keeping in view the gravity of offence, the existing maximum punishment of six months for such offences under the IPC is grossly inadequate.

6.2 In view of above, the Law Commission is of the opinion that the punishment essentially be graded with reference to the harm caused to the consumer due to consumption of adulterated food and drinks. Therefore, it is recommendable that the provisions contained in sections 272 and 273 of the IPC may be suitably modified on the lines of the provisions of the Food Act for the reasons discussed hereinabove.

6.3 While considering the amendments to sections 272 and 273 of the IPC, the Law Commission considered imbibing compensation aspect into the provisions taking into account various elements that constitutes the seriousness of the offence and harm caused to the persons upon consumption of the adulterated foods. In this regard, the Commission considered provisions of sections 357, 357A and 357B of Cr.P.C. which deal with compensation in general and in specific cases. Section 357 makes a general provision for

compensation applicable to all cases other than those provided in sections 357A & 357B. Section 357 reads as under:-

> "**357. Order to pay compensation.-**
>
> (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-
> ....
>
> (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
> .....
>
> (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

6.4 The provisions for compensation contained in sections 357A and 357B of Cr.P.C. apply to cases covered under sections 326A of IPC (voluntarily causing grievous hurt by use of acid etc.) and section 376D of IPC (gang rape). Keeping in view the heinous nature of crime in those provisions, two proviso have been provided with the intent that the amount of fine to be imposed by the court shall be just and reasonable to meet the medical expenses of treatment of victim and in the latter case for rehabilitation of the victim as well; and any such fine shall be paid to the victim. The quantum of compensation is always determined by taking into account the nature of the crime, the manner in which it has been committed, the justness of claim by the victim and the ability of the accused to pay.

6.5 As we are aware that adulteration of food causes several health problems in humans. Most of the food adulterants are very harmful

and toxic; yet, the greed and profit motive encourages anti-social persons for adulteration. Therefore, the tackling of food adulteration is required to be given due importance for its serious effect on the health of the public. From the above, it may be seen that though the offences covered under sections 357A and 357B of Cr.P.C. stand at a different pedestal than the food adulteration; yet, in case where the food adulteration causes grievous injury or where such adulteration results in death seems to be the cases which can be squarely covered under section 357B keeping in view the health hazards due to food adulteration which results in various ailments and premature deaths. Thus, keeping in view the serious nature of the crime, the aforesaid two cases be covered under section 357B of Cr.P.C.

6.6 In strict legal sense crime generally takes in its sweep intentional invasion of personal rights and not those which are accidental, mistaken or irrational or provoked. Chapter XIV of the IPC deals with offences affecting public health, safety, convenience and morals etc. Sections 272 & 273 deals with adulterated or noxious (unfit for human consumption) food or drinks intended for sale, etc. As discussed in Chapter IV, the Food Act may not be occupying the entire field and thus may not render provisions of sections 272 and 273 IPC redundant. The Supreme Court while deciding the case in *Swami Achyutanand Tirth & Ors.* (*supra*) had taken note of the judgement of the Allahabad High Court in *M/s Pepsico India Holdings Pvt. Ltd & Anr.* (*supra*) and further noticed that against the said judgement Criminal Appeals no. 472, 476- 478 and 479 of 2012, etc., are pending consideration. Appeals against the said judgements of the Allahabad High Court have been de-tagged from the writ petition in *Swami Achyutanand Tirth & Ors.* (*supra*).

6.7 In such a fact situation as the issue as to whether criminal proceedings can be initiated under sections 272 and 273 IPC after commencement of the PFA Act or the Food Act in force, is sub judice it

is not appropriate for the Commission to comment upon the merits of the said judgement. Be that as it may, in compliance with the Supreme Court order, a draft Amendment Bill is prepared recommending it for the consideration of the Government. Accordingly, a comparative statement showing the changes proposed in the IPC and CrPC and a draft Amendment Bill prepared by the Law Commission is enclosed at Annexures-A and B respectively.

Sd/-

[Justice Dr. B.S. Chauhan]
Chairman

Sd/-

[Justice Ravi R. Tripathi]
Member

Sd/-

[Prof. (Dr.) S. Sivakumar]
Member

Sd/-

[Dr. Sanjay Singh]
Member-Secretary

Sd/-

[Suresh Chandra]
Ex-officio Member

Sd/-

[Dr. G. Narayana Raju]
Ex-officio Member

ANNEXURE-A

Comparative Statement showing the changes proposed in the IPC and CrPC

(Part-I Amendments suggested in IPC)

Provisions under IPC	Amendments suggested by Law Commission of India
272. 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. The text of the State Amendment in respect of Orissa is as under: **Orissa**.- In section 272 for the words "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", the following shall be substituted, namely:— "shall be punished with imprisonment for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life." [Vide Orissa Act 3 of 1999, sec. 2 (w.e.f. 27.1.1999)].	**Substitution of new section for section 272.** In the Indian Penal Code, (45 of 1860) (hereinafter referred to as the Penal Code), for section 272, the following section shall be substituted, namely :- "272. *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, - (i) where such adulteration 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; (ii) where such adulteration results in 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; (iii) where such adulteration results in a grievous injury, with imprisonment for a term which may

Uttar Pradesh. – In section 272 for the words "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", substitute the following words, namely:- "shall be punished with imprisonment for life and shall also be liable to fine: Provided that the court may, for adequate reasons to be mentioned in the judgement, impose a sentence of imprisonment which is less than imprisonment for life." [Vide Uttar Pradesh Act 47 of 1975, sec. 3 (w.e.f. 15.9.1975)]. **West Bengal.-**In section 272 for the words "of either description for a term which may extend to six months, or with fine which mays extend to one thousand rupees, or with both", substitute the following words, namely:- "for life with or without fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life." {Vide West Bengal Act 42 of 1973, sec. 3 (w.e.f. 29.4.1973]	extend to six years and also with fine which shall not be less than five lakh rupees; (iv) where such adulteration 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: Provided that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life: Provided further that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided also that any fine imposed under this section shall be paid to the victim.".
273. 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	**Substitution of new section for section 273.** In the Penal Code, for section 273, the following section shall be substituted, namely:- "273. *Sale of noxious food or drink.*- Whoever sells, or offers or exposes for sale, as food or drink, any article which has

term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. In section 273, State Amendments are the same as under section 272	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, - (i) where the sale, offer for sale or exhibition for sale of such food or drink, 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; (ii) where the sale of such food or drink, results in 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; (iii) where the sale of such food or drink, results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which shall not be less than five lakh rupees; (iv) where the sale of such food or drink, 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: Provided that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life: Provided further that such fine shall be just and

	reasonable to meet the medical expenses and rehabilitation of the victim: Provided also that any fine imposed under this section shall be paid to the victim.”.

(Part-II Amendments suggested in CrPC)

Sec-tion	Offence	Punishment	Cognizable or non-cognisable	Bailable or non-bailable	By what court triable	Section	Offence	Punishment	Cognizable or non-cognisable	Bailable or non-bailable	By what court triable
1	2	3	4	5	6	1	2	3	4	5	6
"272.	Adulterating food or drink intended for sale, so as to make the same noxious -	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable	Bailable	Any Magistrate	"272.	Adulterating food or drink intended for sale, so as to make the same noxious - (i) where such adulteration does not result in injury	Imprisonment which may extend to six months and with fine to be paid to the victim	Cognizable	Bailable	Any Magistrate
							(ii) where such adulteration results in non-grievous injury	Imprisonment which may extend to one year and with fine to be paid to the victim	Cognizable	Bailable	Any Magistrate
							(iii) where the sale of such food or drink, results in a grievous injury	Imprisonment which may extend to six years and with fine to be paid to the victim	Cognizable	Non Bailable	Any Magistrate
							(iv) where the sale of such food or drink, results in death	Imprisonment of not less than seven years but which may extend to life and with fine to be paid to the victim	Cognizable	Non Bailable	Court of Sessions
273.	Selling any food or drink as food or drink, knowing the same to be noxious-	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable	Bailable	Any Magistrate	273.	Selling any food or drink, as food or drink knowing the same to be noxious- (i) where the sale, offer for sale or exhibition for sale of such food or drink, does not result in injury	Imprisonment which may extend to six months and with fine to be paid to the victim	Cognizable	Bailable	Any Magistrate
							(ii) where the sale of such food or drink, results in non-grievous injury	Imprisonment which may extend to one year and with fine to be paid to the victim	Cognizable	Bailable	Any Magistrate

							(iii) where the sale of such food or drink, results in a grievous injury	Imprisonment which may extend to six years and with fine to be paid to the victim	Cognizable	Bailable	Any Magistrate
							(iv) where the sale of such food or drink, results in death	Imprisonment of not less than seven years but which may extend to life and with fine to be paid to the victim	Cognizable	Non Bailable	Court of Sessions.”.
	State Amendment										
	Orissa										
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for life, and fine.	Cognizable	Non-bailable	Court of Session						
273	Selling any food or drink as food and drink, knowing the same to be noxious	Imprisonment for life, and fine	Cognizable	Non-bailable	Court of Session						
	Uttar Pradesh										
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for life, with or without fine	Cognizable	Non-bailable	Court of Session						
273	Selling any food or drink as food and drink, knowing the same to be noxious	Imprisonment for life, with or without fine	Cognizable	Non-Bailable	Court of Session						

	West Bengal										
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for life with or without fine	Cognizable	Non-Bailable	Court of Session						
273	Selling any food or drink, as food and drink, knowing the same to be noxious	Imprisonment for life, with or without fine	Cognizable	Non-Bailable	Court of Session						

ANNEXURE-B

THE CRIMINAL LAW (AMENDMENT) BILL, 2017

A

BILL

further to amend the Indian Penal Code, and the Code of Criminal Procedure, 1973

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. **Short title.** This Act may be called the Criminal Law (Amendment) Act, 2017.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

2. **Substitution of new section for section 272.** In the Indian Penal Code, (45 of 1860) (hereinafter referred to as the Penal Code), for section 272, the following section shall be substituted, namely :-

   "272. *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, -

(i) where such adulteration 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;

(ii) where such adulteration results in 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;

(iii) where such adulteration results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which shall not be less than five lakh rupees;

(iv) where such adulteration 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:

Provided that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life:

Provided further that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided also that any fine imposed under this section shall be paid to the victim.".

3. **Substitution of new section for section 273.** In the Penal Code, for section 273, the following section shall be substituted, namely:-

"273. *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, -

(i) where the sale, offer for sale or exhibition for sale of such food or drink, 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;

(ii) where the sale of such food or drink, results in 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;

(iii) where the sale of such food or drink, results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which shall not be less than five lakh rupees;

(iv) where the sale of such food or drink, 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:

Provided that the court may, for adequate reason to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life:

Provided further that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided also that any fine imposed under this section shall be paid to the victim.".

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

4. **Substitution of new section for section 357B.-** In the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the Code of Criminal Procedure), for section 357B, the following section shall be substituted, namely:-

"357B. *Compensation to be in addition to fine under section 272, section 273, section 326 or section 376D of Indian Penal Code.*- The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 272, section 273, section 326A or section 376D of the Indian Penal Code (45 of 1860).

Explanation.- For the purposes of this section, the expression "victim" shall be construed as defined in clause (wa) of section 2.".

5. Amendment of First Schedule. In the First Schedule to the Code of Criminal Procedure under the heading " I. – OFFENCES UNDER THE INDIAN PENAL CODE (45of 1860)", for the entries relating to sections 272 and 273, the following entries shall be substituted, namely :-

1	2	3	4	5	6
"272.	Adulterating food or drink intended for sale, so as to make the same noxious - (i) where such adulteration does not result in injury	Imprisonment which may extend to six months and with fine to be paid to the victim.	Cognizable	Bailable	Any Magistrate
	(ii) where such adulteration results in non-grievous injury	Imprisonment which may extend to one year and with fine to be paid to the victim.	Cognizable	Bailable	Any Magistrate
	(iii) where the sale of such food or drink, results in a grievous injury	Imprisonment which may extend to six years and with fine to be paid to the victim.	Cognizable	Non Bailable	Any Magistrate
	(iv) where the sale of such food or drink, results in death	Imprisonment of not less than seven years but which may extend to life and with fine to be paid to the victim.	Cognizable	Non Bailable	Court of Sessions
273.	Selling any food or drink, as food or drink knowing the same to be noxious- (i) where the sale, offer for sale or exhibition for sale of such food or drink, does not result in injury	Imprisonment which may extend to six months and with fine to be paid to the victim.	Cognizable	Bailable	Any Magistrate

	(ii) where the sale of such food or drink, results in non-grievous injury	Imprisonment which may extend to one year and with fine to be paid to the victim.	Cognizable	Bailable	Any Magistrate
	(iii) where the sale of such food or drink, results in a grievous injury	Imprisonment which may extend to six years and with fine to be paid to the victim.	Cognizable	Bailable	Any Magistrate
	(iv) where the sale of such food or drink, results in death	Imprisonment of not less than seven years but which may extend to life and with fine to be paid to the victim.	Cognizable	Non Bailable	Court of Sessions.”.