ADULTERATION OF FOOD – THE CRIME AND PUNISHMENT, THE PARLIAMENT AND THE COURTS.

By
Sri S.M. Deka
Director
North Eastern Judicial Officers' Training Institute (NEJOTI)

1. In the fifth year of the Republic of India the Parliament enacted an Act to make provision for prevention of adulteration of food. The short title of the Act calls it the Prevention of Food Adulteration Act, 1954 and will hereinafter be referred to as the PFA Act. The PFA Act was brought into force by Notification dated 9th May 1955 with effect from the 1st of June 1955. Thereafter up till now there has been two major amendments of the PFA Act, one by amending Act 49 of 1964 which came into force with effect from 01.03.1965 and the other by Amending Act 34 of 1976 which came into force with effect from 01.04.1976. In view of the limited scope of this essay changes made by the Parliament in the Penal provisions under section 16(1) only will be considered.

2. The punishment under section 16(1) of the PFA Act that was in operation for the period 01.06.1955 to 28.02.1965 was as follows :-

   (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

   (ii) for a second offence with imprisonment for a term which may extend to two years and with fine :

   Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the Judgement of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees.

   (iii) For a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine :

   Provided that in the absence of special and adequate reasons to the contrary to be

mentioned in the Judgement of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

Thus under the original PFA Act in force during the period from 01.06.1955 to 28.02.1965 as in ordinary crimes only the maximum punishment had been prescribed. Although the provisos under (ii) and (iii) above fix minimum sentence also they are not mandatory as because the Courts may on finding special and adequate reasons to be recorded in the Judgement award any sentence within the maximum prescribed by section 16(1) as in ordinary crimes.

3. Amending Act 49 of 1964 remained in force for the period from 01.03.1965 to 31.03.1976. Changes in law made by this amendment are as follows :- Clause (a) of section 16(1) has been divided into sub-clause (i) and (ii). Original clauses (b),(c),(d) remained intact but clause (e) has been transferred to a new Sub-section numbered (I-A). Original (f) and (g) have became new (e) and (f).

The penal provision which is the theme of this article reads thus : "……. shall,……., be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years and with fine which shall not be less than one thousand rupees provided that –

(i) if the offence is under Sub-clause (i) of clause (a) and is with respect to an article of food which is adulterated under Sub-clause (l) of clause (i) of section 2 or misbranded under Sub-clause (k) of clause (ix) of that section ; or

(ii) if the offence is under Sub-clause (ii) of clause (a) the Court may for any adequate and special reasons to be mentioned in the Judgement, impose a sentence of less than six months or of fine of less than one thousand or of both imprisonment for a term of less than six months and fine of less than one thousand rupees."

In Kisan Trimbak Kothule Vs State of Maharastra A.I.R 1977 S.C 435 offences falling under the two provisos quoted above have been described as the "proviso offences". Thus under the amended provisions for the first time a mandatory minimum sentence has been provided except for the "proviso offences" which may be punished within the maximum sentence like any other crime on finding of adequate and special reasons. It needs to be emphasized that the proviso offences are firstly limited, out of twelve varieties

of adulteration as defined in section 2 of the PFA Act, to only one variety under section 2(i) (l) and out of the eleven varieties of misbranding limited only to one variety under section 2(ix) (k). Secondly offences other than those falling under the above but falling under section 7(v) of the PFA Act also will come under the category of "proviso offences" where discretion of the Court have wide play in the matter of sentencing.

4. Lastly, with effect from the first of April, 1976 by the Act 34 of 1976 the Parliament made the punishment most stringent in that even for the "proviso offences" mandatory minimum sentence of imprisonment for three months and a fine of rupees five hundred has been prescribed and that too on recording "any adequate and special reasons" in the Judgement. Moreover the "proviso offences" themselves have been drastically altered. Currently the two proviso offences are the following :

(i) offence under section 16(1) Sub-clause (i) of clause (a) with respect to primary food adulterated due to human agency or with respect to an article of food which is misbranded within the meaning of Sub-clause (k) of clause (ix) of section 2 and

(ii) offence under section 16 (1) Sub-clause (ii) of clause (a) but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of Sub-clause (I-A) of section 23 or under clause (b) of sub-clause (2) of section 24.

A further proviso to (ii) above says that offences, with respect to contravention of Rules mentioned in (ii) which are Rules relating condition of sale and licensing for sale, maybe punished on finding of adequate and special reasons with a maximum sentence of three months imprisonment and a maximum fine of three thousand rupees. Thus only this variety of offences under section 16(i) can be dealt with like an ordinary crime.

5. The parliamentary prescription for the punishment of the crime of adulteration of food unlike other crime is thus period specific. In other words if the crime was committed during the period from 01.06.1955 to 28.02.1965 the punishment could be like in any other crime, for the period between 01.03.1965 to 31.03.1976 except for the "proviso offences" extant during that period a mandatory minimum sentence of imprisonment for six months and a fine of rupees one thousand was provided and lastly for the period since 01.04.1976 even for the amended "proviso offences" a mandatory minimum sentence of imprisonment for three months

and a fine of rupees five hundred has been prescribed. The parliament having proposed as described above it may now be seen how the Courts specially the higher courts have disposed the matter of punishment.

6. It is trite to say that there can hardly be a precedent on the question of sentence. In criminal cases sentence in a case depends on the peculiar facts and circumstances of a given case. Because of this the writer has not come across any precedent laying down that the mandatory punishment prescribed by the Parliament for the crime of adulteration of food can be departed from in purported exercise of a sort of mercy jurisdiction by the courts. Despite this although the original and the appellate courts have meticulously obeyed the Parliamentary prescription in the matter of sentencing in a case under the PFA Act the same cannot be said about the High Courts and in a few cases about the Supreme Court as well.

High Courts have mostly applied decisions of the Supreme Court in this regard considering the same to be the law declared under Article 141 of the Constitution of India. Apart from the fact that such decisions fail the test of being a law declared the decisions have been used without even considering the most crucial factual situation as to the date of the offence. In other words if in a case occurring in 1962 the Supreme Court had let off an accused with fine only on the ground of the protraction of the prosecution or of the old age of the accused or of his illness etc. this cannot be and should not be applied as a precedent in a case occurring in 1980 after the coming into force of Act 34 of 1976, whereunder mandatory minimum sentence has been prescribed although the grounds mentioned above cumulatively or singly may be within the “adequate and special reasons” indicated earlier.

7. From Sarjoo Prasad –Vs- State of U.P. A.I.R 1961 S.C 631 decided on 16.12.1960 to Delhi Administration (now NCT of Delhi) V. Manoharlal A.I.R 2002 SC 3088 decided on 29.08.2002 the Supreme Court dealt with the question of punishment for the crime of adulteration of food in fifty one cases. Some of the cases were from the period between 01.06.1955 to 28.02.1965, some are of the period from 01.03.1965 to 31.03.1976 and others are of period from 01.04.1976 onwards. It has already been indicated that Parliamentary prescription of punishment for the three periods as above are different. One may now take a closer look at the decisions from the Supreme Court.

8. In Sarjoo Prasad Vs. State of U.P. A.I.R 1961 SC 631 decided on 16.12.1960 a sample of mustard oil was sold to Food Inspector by

the accused on 22.09.1956. The accused was eventually prosecuted, convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of rupees 2000/-. The appeal and the revision remaining unsuccessful Sarjoo Prasad reached the Supreme Court via Article 136 of the Constitution of India. That was a case under the original PFA Act where for a second offence the punishment is mandatory minimum of imprisonment for one year and a fine of Rupees two thousand but the proviso permitted courts to minimize the sentence for adequate and special reasons. The three Judge Bench of the Supreme Court reduced the sentence of imprisonment to three months and remitted the fine.

Another case under the original PFA Act is M.V. Joshi Vs. M.U. Shimpi A.I.R. 1961 S.C. 1494 decided on 27.02.1961 where a sentence of two months imprisonment and a fine of Rs.250/- was reduced to only a fine of Rs.250/- which was in accord with the Parliamentary prescription.

Only other decision under the original PFA Act is Gopal Das Baheti Vs State of Assam and another 1948-1997 FAC (SC) 254 decided on 02.05.1962 by a three Judge Bench of the Supreme Court. In that case sample of tea leaves were taken on 11.09.1958. The Magistrate on conviction awarded the maximum sentence of one year's imprisonment and a fine of rupees two thousand. The Supreme Court thought that the sentence for a first offence under section 16 of the PFA Act was somewhat disproportionate to the gravity of the offence and reduced the prison sentence to the period already undergone while maintaining the fine.

9. The following cases on the question of sentence decided by the Supreme Court namely,

1. Jagadish alias Jagadish Prasad Gupta
-Vs-
State of West Bengal A.I.R 1972 S.C. 2044,

2. Gurumukh Singh and Ors.
-Vs-
State of Punjab, A.I.R 1972 S.C. 824

3. Smti. Manibai and Anr.
-Vs-
State of Maharastra, A.I.R 1974 S.C. 434

4. Pyarali K. Tejani
-Vs-
Mahadeo Ramchandra Dange A.I.R 1974 S.C. 228

5. Muralidhar Meghraj Loya
-Vs-
State of Maharastra A.I.R 1976 S.C. 1929

6. Kisan Trimbak Kothule
-Vs-
State of Maharastra A.I.R 1977 S.C.435

7. Prem Ballab and Anr.
-Vs-
State of (Delhi Admn.) A.I.R 1977 S.C.56

8. Shambhu Dayal
-Vs-
State of U.P. A.I.R 1979 S.C. 310

9. M.K. Ananda Rao
-Vs-
State of Andhra Pradesh A.I.R 1979 S.C.701

10. Lingappa Shetty
-Vs-
Hubli Dharvar Municipal Co. A.I.R 1979 S.C.1838

11.Umedmal and Lalta Prasad
-Vs-
State of Maharastra A.I.R 1979 S.C.1700

12. Inderjeet
-Vs-
State of U.P. A.I.R 1979 S.C.1867

13. Sharif Ahmed
-Vs-
State of U.P. A.I.R 1979 S.C.1917

14. Bal Kishan Thapar
-Vs-
Municipal Corporation of Delhi, A.I.R 1979 S.C. 1004

15. Ramdas Bhikaji Chaudhari

-Vs-

Sadanand and Ors. A.I.R 1980 S.C. 126

16. Municipal Corporation of Delhi

-Vs-

Tek Chand Bhatia, A.I.R 1980 S.C. 360

17. State of Tamilnadu

-Vs-

S. Shanmugham Chettiar and Ors.A.I.R1981S.C. 175

18. Umrao Singh

-Vs-

State of Haryana A.I.R 1981 S.C. 1723

19. State of Orissa

-Vs-

K. Rajeshwar Rao A.I.R 1992 S.C. 240

20. Khem Chand

-Vs-

State of Himachal Pradesh A.I.R 1994 S.C. 226

21.Phudco and Ors.

-Vs-

State of Madhya Pradesh 1948-1997 FAC (SC) 562

22. Aladenkandu Puthiyapurayil Abdulla

-Vs-

The Food Inspector, Cannanore & Ors. 1948-1977 FAC 1994 (SC) 598

23. Bhagawan Das MotuLal Navalani

-Vs-

State of Maharastra 1948-1997 FAC (SC) 912, are from the period between 01.03.1965 to 31.03.1976 when the 1964 amendment of the PFA Act was applicable. Apart from the general comment that the Supreme Court faithfully obeyed the Parliamentary prescription of punishment in these cases a few of these cases deserve special attention. These are considered hereinafter.

Cases listed above at serial 4,5,6 and 7 are the most important as they elucidate the parliamentary prescription as regards the punishment and the Court's mandate in consonance

therewith. At serial 4 Tejani case (Supra) is the only five Judge Constitution Bench decision of the Supreme Court on the PFA Act. The sale of scented Supari to the Food Inspector took place on 25.01.1971. On 30.09.1971 the accused "was sentenced venially, for some special reasons mentioned by the Magistrate, to a small fine". High Court substituted the mandatory minimum sentence of 6 months R.I. and a fine of Rs. 1000/-. The lucid words of the Supreme Court in this connection are these :-

> *"This is a discretion proof prescription of Legislative sentence but when the offence falls under the proviso to section 16(1) the Court may, for special reasons to be recorded, reduce the punishment ……. Sale of "adulterated" food attracts S.7(i) while violations of the rules are caught in the coils of S. 7(v). This differentiation is linked to S. 16……".*

It was held that the offence in that case fell under section 7(v) read with section 16(i) (a) (ii). Evenso, the punishment of six months imprisonment and fine of rupees one thousand was held to fit the crime and the criminal. The criminal appeal was dismissed as "a futile venture in exculpation and extenuation."

In Kishan Trimbak Kothule (Supra) at serial No.6 a sample of Milk was sold to the Food Inspector on 02.10.1973. At the conclusion of trial that followed the learned Magistrate's kindly eye overlooked this compulsive provision of minimum sentence and the High Court had to enhance the sentence to six months imprisonment plus fine of Rs.500/-. The Supreme Court dismissed the appeal in the following words :-

> "*We accordingly dismiss the appeal, although we leave it to the State Government,…… to consider whether it would exercise the power of clemency to remit the sentence by three months so that it may be in tune with the provisions of the Act as recently amended*".

> *" The sentencing scheme of the Act is this. The offences under S. 16(1) are classified in a rough and ready way and while all of them are expected to be viewed sternly carrying a standard prison sentence, a few of them are regarded as less serious in certain situations so that the Court, for socially adequate, individually ameliorative reasons, may reduce the punishment to below the statutory minimum. The proviso (i) to S.16 (1) takes care of this comparatively lesser class which may, for easy reference, be called "proviso offences". This dichotomy of food crimes throws the burden on the Court of identifying the category to which the offence of the accused belongs. This Court has earlier held – and to this we will later revert – that even if the offence charged falls under both the categories i.e., proviso offences and other, there being admittedly some overlap in the definitions, the delinquent earns the severer penalty. In this view, to earn the eligibility to fall under the proviso to S. 16(1), the appellant must establish not only that his case falls positively under the offences specified in the said proviso but negatively that his facts do not attract any of the non-proviso offences in S. 16(1).*

This was a three Judge decision of the Supreme Court and is dated 17.11.1976 and the 1976 amendment of the PFA Act came into force on 01.04.1976.

In Muralidhar Meghraj Loya (Supra) at serial No. 5 on 16.02.1972 the Food Inspector purchased Khurasani Oil from the accused. On analysis the sample was found to contain 30% ground nut oil. Eventually the High Court in revision enhanced the sentence to six months imprisonment and fine of Rupees 1000/-. That the proviso to section 16 cannot be applied at the drop of a hat is best explained in the words of the Supreme Court. –

> *" Judicial compassion can play upon the situation only if the offence is under sub-cl. (i) of cl. (a) of S.16(1) and the adulteration is one which falls under sub-cl. (1) of S.2. Secondly, the proviso also applies if the offence is under sub-cl.(ii) of cl.(a), that is to say, the offence is not one of adulteration but is made up of a contravention of any of the other provisions of the Act or of any rule made thereunder. In the present case we have already found that accused is guilty of an offence of adulteration of food under S.2(i) (a). Therefore, proviso (ii) is out. Proviso (i) will be attracted according to Sri Bhandare, if S.2(i) (1) applies to the species of adulteration committed. In our view, the only sensible understanding of proviso (i) is that Judicial jurisdiction to soften the sentence arises if the offence adulteration fall only under sub-cl.(1) of cl.(i) of S.2 and we have held that it does not. .....Be that as it may, in the present case S. 2(i) (a) applies and S. 16 (1) (a) has been breached. Therefore the proviso cannot be applied in extenuation and the conviction of the High Court has to be upheld."*

In Prem Ballab (Supra) at serial No.7 on conviction under section 7(i) read with section 16(I) (a) (i) of the PFA Act for having sold a sample of mustard oil to the Food Inspector on 23.06.1969 and having been sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rupees 1000/- the appellants approached the Supreme Court. Application of the proviso again fell for consideration of the Supreme Court. Application of the proviso was negatived holding that the adulteration was under 2(i) (j) as well as under Section 2(i) (I). It was also held that the several clauses of section 2(i) are not mutually exclusive. A conjoint reading of these four decisions yields the following. To apply the proviso the Court has first to identify whether the offence is punishable exclusively under Sec. 16(1) (a) (i) or under Sec. 16(1) (a) (ii). The next step will be to identify under which of the twelve categories of adulteration the offence falls if it is punishable under Sec. 16(1) (a) (i). Only if the

adulteration is positively under Sec. 2(i) (I) and negatively it does not fall under any other category of adulteration or if it is punishable exclusively under Sec. 16(1) (a) (ii) the proviso applies. The Court then, can begin to find adequate and special reasons to bring down the sentence from the mandatory minimum of 6 months imprisonment and a fine of rupees 1000/-. The Courts, specially the High Courts and in some cases the Supreme Court as well fail to follow the above sequence in sentencing below the minimum.

Five other cases from this group need further consideration. They are listed at serial No. 22, 13, 16, 20, and 19. In Aladenkandu (Supra) at serial No. 22 "inexplicable, inordinate delay in trial" for five years and the fact that the accused served about three months of the sentence of six months coupled with the further fact that trade of the accused has been wound up could not persuade the Supreme Court to bring down the sentence from the mandatory minimum. The Judgement ended with an advice to the appellant to move the State Govt. for remission. There was no direction to the State Govt. for remission.

In Tek Chand Bhatia (Supra) at serial No. 16 the Supreme Court appears to have failed to notice the Constitution Bench decision in Tejani Case (Supra) and Kisan Trimbak (Supra). In Tek Chand Bhatia (Supra) the adulteration was under S. 2(i)(f). Therefore the proviso to section 16 cannot apply as explained in Tejani (Supra), and Kisan (Supra) which are binding on the Division Bench deciding Tek Chand (Supra). The Division Bench erroneously thought that under the proviso to section 16(I) of the 1964 amendment Act for all kinds of adulteration for adequate and special reasons sentence of imprisonment may be dispensed with. Khem Chand at serial No.20 deserves special mention because though it is reported in A.I.R 1994 S.C 226 it is really a case under the amending Act of 1964 where there is wider discretion as to sentencing. But the reasonings as to sentencing given by the Supreme Court at para 3 of the Judgement have apparently become the bench mark as reasonings for the reduction of sentence in the teeth of parliamentary prescription. On the punishment para 3 reads as under :-

> "*The appellant is only a milk vendor and the occurrence is said to have taken place in 1974. The sample of milk is declared to be adulterated on the sole ground that there was some deficiency in milk solids non-fats. The adulteration is of a minor nature. For these special reasons while*

confirming the conviction of the appellant, we reduce the sentence to there months R.I. The sentence of fine with default clause is confirmed. Subject to this modification of sentence, the appeal is dismissed."

In State of Orissa (Supra) at serial No.19 concurrent acquittal in the two Courts below was upset by the Supreme Court in a case where the sale took place on 13.03.1976 that is just 18 days before the coming into force of the amending Act 34 of 1976. The Supreme Court took notice of the difference in the penal provision and the mental agony of the accused during fifteen years pendency of the prosecution and imposed only a fine of rupees 500/-. This is in accord with the provision of law extant at the time.

Sharif Ahmed (Supra) at serial No. 13 is a short order dismissing the special leave petition by the Supreme Court. This section may be ended by quoting the pithy words of the Supreme Court in the order.

"…… It does not follow that because it is not specially mentioned to be injurious, it is non-injurious. Absence of evidence is not equal to evidence of absence. For aught we know, the prohibition under the Act and the Rules has been imposed because it is harmful to human health. It is true that the High Court has, under a misconception, reduced the sentence, but we cannot be pressurized further into following the wrong path. The special leave petition is dismissed."

Thus except in Tek Chand (Supra) the Supreme Court in the cases under the amending Act of 1964 followed the parliamentary prescription faithfully and correctly. The same, however cannot be said about the High Courts. The comment of the Supreme Court in Sharif Ahmed (Supra) quoted above regarding "misconception" applies to many High Court decisions in this period. The bench mark reasonings for interfering with the minimum sentence as indicated above are the protraction of the prosecution, poverty, age and infirmity of the accused and marginal nature of the adulteration.

10. Cases where the occurrence took place on or after 01.04.1976 may now be considered. As indicated earlier the law is the strictest for

this group. Mandatory minimum sentence is imprisonment for six months and fine of Rs.1000/- and if the proviso applies the mandatory minimum is imprisonment for three months and a fine of Rs. 500/-. Twenty five decisions from the Supreme Court fall in this group. They can be divided into four sub-groups. In the first sub-group are cases where the parliamentary prescription has been followed to a T. In the second sub-group are case/cases where there has been a "misconception of the law" at the hands of the Supreme Court. In the third sub-group are cases where there has been assumption of power to interfere with the minimum sentence prescribed by the Parliament. The fourth, and the last sub-group constitute the latest trend in sentencing by the Supreme Court. If the misconceived interference with the sentence by the High Courts in the cases arising between 01.03.1965 to 31.03.1976 can be called a drizzle because of the trend emerging from the Supreme Court it turned into a downpour at the hands of High Courts during this period so much so that law made by the Parliament was sacrificed at the altar of supposed justice. Law Reports are replete with sentences in sentencing part of the High Court Judgments as follows – "No useful purpose will be served by sending the accused to jail at this distance of time. Fine alone will meet the ends of justice".

The list of these twenty five decisions is this :-

1. State of Maharastra -Vs- Baburao Ravaji Mahrulkar and Ors, A.I.R 1985 S.C. 104.
2. Babu Ram – Vs- State of Haryana, 148-1997 FAC, (SC) 920.
3. Vinod Kumar –Vs- State of Haryana , 1948-1997 FAC, (SC) 913
4. Braham Dass -Vs- State of Himachal Pradesh A.I.R 1988 S.C.1789.
5. Nav Ratan -Vs- State of Rajasthan, 1948-1997 FAC (SC) 921.
6. DineshChandra Jamnadas Gandhi-Vs- State of Gujrat A.I.R 1989 S.C.1011.
7. State of Uttar Pradesh –Vs- Hanif, A.I.R 1992 S.C.1121.
8. Santana Sahu -Vs- State of Orissa, A.I.R 1948-1997 FAC (SC)1069.
9. K. Krishna Iyar -Vs- State of Kerala , 1948-1997 FAC, (SC) 974.

10. N. Sukumaran Nair -Vs- Food Inspector, Mavelikara 1995 Cr.L.J 3651.
11. Badri Prasad -Vs- State of M.P., 1948-1997 FAC, (SC)1122.
12. M/S Muralidhar Shyamlal & Anr. -Vs- State of Assam, 1948-1997 FAC, (SC)1066.
13. Sri Krishan Gopal Sharma & Ors. -Vs- Govt. of N.C.T. of Delhi 1948-1997 FAC, (SC)1075.
14. Ram Lakhan -Vs- State of Uttar Pradesh 1948-1997, FAC, (SC)1200.
15. State of Haryana –Vs- Pawan Kumar 1999 (1) FAC 16.
16. Haripada Das -Vs- State of West Bengal, A.I.R 1999 S.C.1482.
17. Jagadish Prasad -Vs- State of Uttar Pradesh, A.I.R 1999 S.C.1539.
18. Santosh Kumar Vs Municipal Corporation and Anr. AIR 2000 S.C. 3416.
19. Ramlal Vs State of Rajasthan A.I.R 2001 S.C. 47
20. Rajender Kumar Vs State of Himachal Pradesh and Anr. 2002 (1) FAC 230
21. Birbal Vs State of Haryana 2002 (1) FAC 165
22. Desh Raj Vs State of Himachal Pradesh 2002 (2) FAC 81
23. Mahendra Kumar G Patel and Anr. Vs State of Gujrat and Anr. 2002(2) FAC 105
24. Mahendra Pal Singh (a) Havinder Pal Singh Vs State (Delhi Administration) 2003 (1) FAC 4.
25. Delhi Administration Vs Manoharlal A.I.R 2002 S.C. 3088.

Of the cases listed above those at serial 3, 7, 8, 9,12, 15, 17,19, 20, 21,22, and 23 accord with the parliamentary prescription as regards sentence fully. Few samples from these decisions of the Supreme Court will be instructive.

Muralidhar Shyamlal (Supra) at Sl. No.12 is a case relating to a sample of mustard Oil purchased for analysis on 01.02.1984. The protraction of the prosecution till the date of the

Judgement of the Supreme Court on 18.01.1996, a period spanning more than a decade could not persuade the Supreme Court to bring down the sentence below the mandatory minimum of six months imprisonment and a fine of Rs. 1000/- because of the Amendment Act of 1976.

In Hanif (Supra) at Sl. No.7 concurrent conviction and sentence of 6 months R.I and fine of Rs.1000/- for selling adulterated milk was upset by the High Court. On appeal by the State the Supreme Court held as follows :-

> "*It is next contended that the sale of adulterated milk was on December 3, 1978 and the long lapse of time is a cause to take a lenient view in the matter. In view of the fact that after Amending Act 34 of 1976, the sentence imposed by the courts below is minimum and that, therefore, there is no scope warranting interference.*"

Appeal was allowed and the concurrent Judgement of the trial and appellate court were restored.

In K. Krishna Iyer (Supra) at Sl. No. 9 a sale of adulterated ice stick by the accused on 12.02.1980 visited him with conviction and sentence of R.I for one year and a fine of Rs.2000/- under section 16 (I-A) of the PFA Act. In the Supreme Court argument on the long pendency of the prosecution upto 1993 remained unproductive. The Supreme Court said,

> *"Just because the appeal remained pending since 1985 the society cannot be made to suffer for this delay by letting the criminal go unpunished as a crime of this nature being a crime against the society at large, cannot be ignored. Sympathy in such cases is totally misplaced."*

Conviction was altered to one under section 16(1) (a) (i) and the minimum mandatory sentence of six months R.I and a fine of Rs.1000/- was imposed.

In Pawan Kumar (Supra) at Sl. No. 15 decided on 24.10.1997 the Supreme Court on the question of sentence said thus –

> " ..... the High Court erred in reducing the substantive sentence to the period already undergone (which is less than a month) as the minimum

> substantive sentence to be imposed under the Act for the above offence is six months. However, considering the fact that since the offence was committed, more than 16 years have elapsed, we feel that the minimum sentence prescribed under the Act will meet the ends of justice."

In Jagadish Prasad (Supra) at Sl. No. 17 in a Judgement delivered on 22.07.1998 after 19 years of the date of sale during which the owner who was the father of the accused died, the Supreme Court repelled the submission for reduction of sentence in the following words –

> " We cannot accept the submission because once the offence is held proved, the minimum sentence has to be imposed."

In Ramlal (Supra) at Sl. No.19 the Supreme Court in a Judgement dated 01.11.2000 after 22 years from the date of sale did not hesitate to impose the minimum sentence of 3 months imprisonment and a fine of Rs.500/- on reduction of the 6 months and 1000/- imposed by the High Court..

In Rajinder Kumar (Supra) at Sl. No. 20 a plea for reduction of sentence below 6 months was turned down because of the law. In Birbal (Supra) at Sl. No. 21 in a Judgement dated 07.01.2002 Milk is held to be a primary food and sentence was reduced to 3 months under the proviso to section 16.

In Desh Raj (Supra) at Sl. No. 22 in a Judgement dated 12.02.2002 the Supreme Court held as under :-

> "*The question which remains to be considered relates to the sentence, under section 16(1) (A) of the Act, the minimum sentence prescribed is one year imprisonment and fine of Rs.2000/-. The order of sentence passed in the case is in terms of the statutory provision. This provision was introduced in the Act by amendment in 1976 which reflects the*

legislative policy of deterrent punishment for offences under the Act."

In Mahendra Kumar (Supra) in Sl. No. 23 in a Judgement delivered on 30.04.2002 the Supreme Court dealt with a case of adulteration of curd. The three Courts below stuck to the mandatory minimum sentence of imprisonment for six months and a fine of Rs.1000/-. On the plea of reduction of the sentence the Supreme Court observed :-

"We feel that in view of the mandatory provisions of section 16 of the Act, no sentence lesser than the sentence provided by the statute can be awarded.'

Decision at Sl. No. 1,5,13 and 16 fall in the second sub-group where the Supreme Court appears to have failed to apply the law correctly.

In Baburao Ravaji Mahrulkar (Supra) at Sl. No. 1 the three Judge Bench of the Supreme Court found as follows :-"There cannot be least doubt that the ice cream sold by the first respondent was adulterated within the meaning of section 2(I-a) (m) of he Prevention of Food Adulteration Act, 1954."

Therefore, conviction should have been under section 16(1) (a) (i) and not section 16 (1) (a) (ii) as recorded by the Supreme Court latter in the Judgement. Since the offence is punishable under section 16 (1) (a) (i) and for adulteration under section 2(I-a) (m) ice cream not being a primary food the proviso to section 16(1) could not have been applied as have been done by the Supreme Court to award the minimum sentence under the proviso.

In Nav Ratan (Supra) at Sl. No. 5 the Supreme Court again misapplied the first proviso to section 16 of the PFA Act in a case of chilly powder in as much as the first proviso applies only to adulteration under section 2 (I-a) (m) in respect of primary food and chilly powder is definitely not a primary food within the meaning of section 2(xii-a) of the PFA Act.

Sri Krishan Gopal Sharma (Supra) at Sl. No.13 appears to be the only case of its kind where the Supreme Court dealing with an appeal arising out of an order of the High Court refusing to quash a complaint under the PFA Act held that "the impugned decision of the High Court in dismissing the application under section 482 Cr. P.C cannot be held to be unjustified" and yet gave relief to the appellant.

The Constitution Bench decision in Tejani case (Supra) was misapplied because Tejani (Supra) was decided on 31.10.1973 when the law extant was under the amending Act of 1964 whereas

Krishan Gopal (Supra) dealt with a sample taken after the amending Act of 1976 came into force. Proviso under the two amending Acts are quite different. Because of the said misapplication of the law the Supreme Court thought that had there been a trial and conviction in the case fine alone would have met the ends of justice. On the facts appearing from the Judgement conviction if there was to be any would have been under section 16 (1) (a) (ii) and under proviso extant after 01.04.1976 mandatory minimum sentence would have been three months imprisonment and a fine of Rs.500/- assuming there existed any adequate and special reasons for so to bring down the sentence.

In Haripada (Supra) at Sl. No. 16 the Supreme Court disposed of four Criminal Appeals by one Judgement. Only the orders in Criminal Appeals No. 61, 62 and 265 of 1986 are relevant for the present purpose. All are cases of adulteration of mustard oil and the offences were apparently commited after 01.04.1976. But the Supreme Court relied on two of its previous decisions namely Bhagawan Das Motu Lal (Supra) and Jagadish Prasad (Supra) both of which were cases when the Amending Act 49 of 1964 was in force. On misapplication of the two decisions sentences were reduced to the period already undergone.

The third sub-group of decisions numbering four are formed by the cases at serial 2,4,14 and 24. Peculiar feature of these decisions is that the Supreme Court did not pinpoint any enabling provision where under sentences in the teeth of the parliamentary prescription can be passed by the Court. There is simply the assumption of power to do so.

Three of these decisions namely Baburam (Supra) at Sl. No. 2, Mahendra Pal (Supra) at Sl. No. 24 and Ram Lakhan at Sl. No. 14 are short orders so much so that even the article of food in Baburam (Supra) and Mahendra Pal (Supra) are not indicated in the orders. Ram Lakhan (Supra) is a case of Boondia Laddu coloured with prohibited coal-tar dye. A reduction of the sentence to the period already undergone in a case of adulteration under section 2(i-a) (j) of the PFA Act is a grave departure from the parliamentary prescription in this regard.

In Mahendra Pal (Supra) at Sl. No. 24 the sentence “in the peculiar facts and circumstances of this case” was again reduced to the period already undergone. These three cases being short orders may not have been widely reported. Therefore their potential of being followed by the High Courts as a precedent is slim. But not so, Braham Dass (Supra) at Sl. No. 4 which is a full Judgement and has been widely reported and cited as well as a precedent. The Food inspector there purchased a sample of Masur

whole from the accused on 09.07.1980. The High Court on reversal of the appellate Judgement of acquittal found the accused guilty and on conviction sentenced him to undergo the standard prison sentence and to pay a fine of Rs.1000/-. The Supreme Court agreed with the high Court that the adulteration fell under section 2(I-a) (f) as there is no standard fixed for Masur Whole at the material time. On the question of sentence in clearest breach of the provisions of section 16(I) (a) (i) of the PFA Act the Court found that no "useful purpose would be served in sending the appellant to jail at this point of time." The Judgement was dated 02.08.1988 and the occurrence took place about 8 years back on 09.07.1980. The Judgement is not only a breach of the Parliamentary Prescription but also is in disregard of the Constitution Bench decision in Tejani (Supra), the three Judge decision in Kisan Trimback (Supra) and the entire twelve decisions forming first sub-group in this section. Following this as a precedent the High Courts forgot about the PFA Act and interfered with the sentence in exercise of a sort of mercy jurisdiction. But not all the High Courts. The spate of interference with the sentence in disregard of the parliamentary prescription, as far as Gauhati High Court is concerned was put a stop to by the Division Bench Judgement in Jitmal Maheswari Vs State of Assam (1993) 1 GLR 397. What the High Court said about Braham Dass (Supra) may be quoted as under :-

> *"…… . The Supreme Court did not advert to the provision for minimum sentence incorporated in the Act by the Amending Act of 1976. The Supreme Court in this decision has not declared the law or laid down any principle of law or precedent which is binding on the High Courts or subordinate Courts. The High Court cannot reduce or set aside the minimum sentence of imprisonment in the absence of any specific provision enabling it to do so".*

The fourth sub-group comprising cases at serial 6,10,11,18 and 25 charts a new trend in sentencing. Seed of this new trend appears to have been planted in four decisions under the Amending Act of 1964. These are Muralidhar Meghraj Loya (Supra), Kisan Trimback Kothule (Supra), Aladenkandu (Supra) and Inderjeet (Supra). Observations in these four cases respectively were "(1) It may be appropriate for the Government to consider whether in the circumstances of this case and in the light of the observations made by us in this Judgement it is not a matter for exercise of commutation powers." (2) "……. we leave it to the

State Government,……., to consider whether it should exercise the power of clemency……", (3) "Having regard to the totality of circumstances, it is open to the petitioner to move the state Government to remit the remaining portion of the sentence……", and (4) Even otherwise, there is a general power in the Executive to commute sentences and such power can be put into action on a principled basis when small men got caught by the law……. the grounds urged are more appropriately an appeal to the Parliament and the Executive."

The seed planted in the four cases above germinated in DineshChandra Jamnadas Gandhi (Supra) at serial 6 when for the first time the Supreme Court postponed the imposition of the substantive sentence of imprisonment enabling the accused to move the Government within a month from the date of the Judgement which was 17.01.1989. The plant became full fledged trees in the next three cases that is in Badri Prasad (Supra) at serial 11, N. Sukumaran Nair (Supra) at serial 10 and Santosh Kumar (Supra) at serial 18 where the Supreme Court gave directions to the Government to commute the sentence. Thus commutation which essentially is an Executive function a position emphasized by the Supreme Court itself as evidenced by the excerpts from the four cases quoted above was in the three cases done by the Court discharging judicial function. The High Courts thereafter followed the above cases as precedents and as far as sentencing is concerned Parliamentary prescription as well as the Executive's prerogative were disregarded till the Supreme Court itself stepped in to tame the tide of interference with the sentence in this manner on 29.08.2002 by delivering the judgement Delhi Administration Vs Manoharlal (Supra) at serial 25. This decision lays down in clearest term (1) that N. Sukumaran Nair (Supra) and Santosh Kumar (Supra) decided or laid down no question of law or principle nor did they declare any law and (2) that what the Supreme Court can do to deal with the fact situation in a case in "the purported exercise of its undoubted inherent and plenary powers to do complete justice", the High Court exercising statutory powers under the criminal law of the land, could not afford to assume to itself the powers and jurisdiction to do the same or similar things." It follows, therefore , that it is not the deed but the word of the Supreme Court declaring the law which has to be followed as a binding precedent. An illustration from the Gauhati High Court will suffice to show how the High Courts have adopted this new trend in sentencing. In Lalit Das Vs State of Assam 2002(3) GLT 532, in a judgement dated 26.06.2002 that is before 29.08.2002 the date of Manoharlal (Supra) the High Court itself commuted the sentence and directed the Govt. to formalize the

matter. In Hanuman Mal Jain Vs State of Assam 2003 (I) GLT 617 dated 03.09.2002 the same wrong path was followed . Next in Muthiram Prambath Haridas Vs State of Assam 2003 Cri.L.J 1359 dated 30.01.2003 Manohorlal (Supra) was noticed and following the decision the High Court refrained from commuting the sentence. But in Ranjit Kumar Sarkar Vs State of Assam 2003 Cri.L.J 3606 in a judgement dated 01.04.2003 again the course deprecated by Manoharlal (Supra) was adopted and the High Court itself commuted the sentence and directed the State Govt. to formalize the matter under section 433 Cr.P.C.

11. In Manoharlal (Supra) at serial 25 the Supreme Court at long last strongly indicated the source of its power to interfere with the mandatory minimum sentence in derogation of the Parliamentary prescription for the same or to direct commutation by virtually assuming the powers of the Executive. "The undoubted inherent plenary powers to do complete justice" is nothing but the powers under Article 142 of the Constitution of India. Leaving aside the question of the powers under Article 142 for the moment, after Manoharlal (Supra) the last and latest of the Supreme Court decisions bearing on the theme of this essay there cannot be any doubt at all that the High Courts and all others Courts in the Country exercising statutory power under the Criminal Laws of the Land which include the PFA Act have no power to tinker with the parliamentary penal prescriptions of the PFA Act either by ordering commutation of the sentence or by the older method of purporting to subserve the supposed ends of justice.

One may now briefly look at "the undoubted inherent plenary powers of the Supreme Court to do complete justice" mentioned in Manoharlal (Supra). From Prem Chand Garg Vs Excise Commissioner, U.P. A.I.R 1963 S.C 996 to State of Punjab Vs Rajesh Syal A.I.R 2002 S.C 3687 the concept of doing complete justice passed through many shades and nuances. The general theory may be undoubted but in application to specific problems the difference and uncertainties abound. A few samples will suffice to elucidate the point. In the first case Prem Chand Garg (Supra) the Court held that deperture from ordinary procedure in order to do complete justice is the crux of the concept and the powers under Article 142 pertains to procedure and no substantive powers are to be exercised. The court was of the view that :-

> *"An order which this Court can make in order to do complete justice between the parties must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be*

> *inconsistent with substantive provisions of the relevant statutory law".*

In A.R. Antulay Vs R.S. Nayak A.I.R 1988 S.C 1231 a Seven Judge Bench of the Supreme Court reiterated the same view as regards the powers under Article 142. However in Vinay Chandra Misra A.I.R 1995 S.C. 2348 the Supreme Court relying on A.I.R 1991 S.C. 2176 and A.I.R S.C 248 thought that observations in Premchand Garg (Supra) "are no longer a good law." Next in Supreme Court Bar Association Vs Union of India A.I.R 1998 S.C 1895 the Supreme Court overruled Vinay Chandra Misra (Supra) and reiterated Prem Chand Garg (Supra) with a detailed explanation. Para 44 and 45 of the Judgement in Supreme Court Bar Association (Supra) summarized the view of the Constitution Bench. End of para 45 reads thus :-

> "Indeed, these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

Then again at the end of para 81 of the Judgement the Supreme Court observed as follows :-

> *"To the extent, this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions".*

Relying on Supreme Court Bar Association (Supra) in M.S. Ahlawat Vs State of Haryana A.I.R. 2000 S.C. 168 the Supreme Court held that powers under Article 142 cannot be exercised to convict the petitioner under section 193 of the penal code by issuing a show-cause notice. In M.C. Mehta Vs Kamal Nath A.I.R 2000 S.C 1997 relying on the above cases it was held that in proceedings under Article 226 or under Article 32 recourse cannot be taken to Article 142 to impose fine on the polluter because imposition of fine is a matter pertaining to trial and conviction. Another Constitution Bench of the Supreme Court in E.S.P Rajaram Vs Union of India A.I.R 2001 S.C. 581 again reiterated the view expressed in Supreme Court Bar Association (Supra). Lastly in State of Punjab

Vs Rajesh Syal A.I.R. 2002 S.C 3687 one reads this in para 9 of the Judgement –

> " This Court has ample jurisdiction to pas orders under Article 142 (1) of the Constitution which may be necessary for doing complete justice in any case or matter. But even in exercising this power, it is more than doubtful that an order can be passed contrary to law."

Perhaps for our purpose the nearest Supreme Court decision dealing with the powers under Article 142 of the Constitution vis-a vis the minimum mandatory sentence in a penal statute is Keshabhai Malabhai Vankar Vs State of Gujrat 1995 Supp(3) SCC 704 decided on 06.08.1993. The appellant was convicted under section 7(1) (a) (ii) of the Essential Commodities Act 1955 which provides the sentence that "in the case of any other order with imprisonment for a term which shall not be less than three months but may extend to 7 years and shall also be liable to fine." The Supreme Court found that the imposition of minimum sentence on the appellant was not vitiated by any error of law. It was then contended that the Court has plenary powers under Article 142 of the Constitution to reduce the sentence. Dealing with this contention the Court held :-

> *"We are afraid that we cannot ignore the statutory object and reduce the minimum sentence prescribed under the Act. Undoubtedly under Article 142 the Supreme Court has the power untrammeled by any statutory limits but when penal offences have been prescribed for violation of statutory regulations for production, equitable supply and distribution of essential commodities at fair prices, it was done in social interest which this Court would keep in mind while exercising power under Article 142 and respect the legislative policy to impose minimum sentence."*

The upshot of this brief look at the powers of the Supreme Court under Article 142 with the eyes of the Supreme Court is that though Manoharlal (Supra) seeks to uphold the directions to commute given by the Court in Sukumaran Nair (Supra) and Santosh Kumar (Supra) para 81 of the Supreme Court

Bar Association (Supra) a Constitution Bench Judgement quoted earlier seems to deny such power to the Supreme Court . Similarly the reduction of the minimum sentence by the Supreme Court in some of the cases specially in Braham Dass (Supra) in the teeth of the parliamentary prescription of the mandatory minimum sentence will not wash in of view of the decisions noticed above.

12. The thrust of this essay has been an argument for respecting the parliamentary prescription of the minimum sentence by all Courts including the Supreme Court. In so far as the High Court and all other Courts are concerned the Supreme Court itself has settled the matter in Manoharlal (Supra), if any settlement at all was needed. Hopefully in an appropriate occasion the question of power of the Supreme Court to disregard the Parliamentary prescription of minimum sentence in a case under the PFA Act in exercise of the powers under Article 142 will be considered by the Supreme Court in the light of the cases listed in paragraph 11 above as also the holdings on the question in cases like Kisan Trimbak Kothule (Supra), Muralidhar Meghraj Loya (Supra), Aladenkandu (Supra) and Inderjeet (Supra).