

ODISHA ACT 10 OF 1938

THE ODISHA PREVENTION OF ADULTERTION AND CONTORL OF SALE OF  
FOOD ACT, 1938

(23<sup>rd</sup> December) 1938)

Preamble.

**W**HEREAS it is expedient in the interest of public health to prevent the adulteration, and to control the sale of food;

It is hereby enacted as follows:--

Short title and extent.

1. (1) This Act may be called the Orissa Prevention of Adulteration and Control of Sale of Food Act, 1938.

(2) This section extends to the whole of Orissa; the rest of this Act shall extend only to such areas as the Provincial Government may, by notification in the Gazette, direct.

(3) A nctification under this section may extend the rest of this Act to any specified area in respect of any specified food or generally in respect of all food.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) 'butter' and 'cheese' mean respectively butter and cheese made exclusively from milk or cream or both with or without the addition of salt or other innocuous preservative or of innocuous colouring matter;

(2) '*chhana*' is the product obtained by precipitating curd from boiling milk by the addition of lactic acid liquor;

- (3) 'Chemical Examiner' means the Chemical Examiner to Government and includes an Additional Chemical Examiner to Government, an Assistant Chemical Examiner to Government and any officer appointed by Government to perform the duties of a Chemical Examiner under this Act;
- (4) 'cocoanut oil' means oil extracted or pressed out of country *ghana* or other mechanical means from the kernel of cocoanut;
- (5) 'cream' means that portion of milk rich in milk-fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force;
- (6) 'food' means any article used for food or drink by man, other than drugs or water, and includes any article which ordinarily enters into or is used in the composition or preparation of human food, and also includes flavouring matters and condiments;
- (7) 'ghee' means ghee prepared exclusively from butter made from cow's or buffalo's or goat's milk or cream or both;
- (8) 'gingili oil' (or Til oil) means oil extracted or pressed out by country *ghana* or other mechanical means from gingili seeds (Til seeds);
- (9) 'ground-nut oil' means oil extracted or pressed out by country *ghana* or other mechanical means from ground-nut;

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(10) 'gur' means *gur* prepared by boiling juice extracted or pressed out from sugarcanes, palmyra or date trees;

(11) 'linseed oil' means oil extracted or pressed out by country *ghana* or other mechanical means from linseed;

(12) 'local authority' means, in the case of a Municipality constituted under the provisions of the Bihar and Orissa Municipal Act, 1922, the Chairman of the Municipality or, in the case of a Municipality constituted under the Madras District Municipalities Act, 1920, the Commissioner where there is one, or the Chairman of the Council where there is no Commissioner; in the case of District Boards or District Councils constituted under the provisions of the Bihar and Orissa Local Self-Government Act of 1885, or the Central Provinces Local Self-Government Act, 1883, or the Madras Local Boards Act, 1920, the Chairman or the President of the local body, as the case may be; and, in the case of any other area, such authority or officer as the Provincial Government may appoint in this behalf;

(13) 'milk' means the normal clean secretion drawn from the udder of a healthy cow, buffalo, goat or sheep, either completely or after the first portion of such secretion has been drawn off to completion;

(14) 'mustard oil' means oil extracted or pressed out by country *ghana* or other mechanical means from mustard seeds;

B. & O. Act  
VII of 1922.

Madras Act  
V of 1920.

Bengal Act  
III of 1885.  
I of 1883.

Madras Act  
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- (15) 'prescribed' means prescribed by rules, made under this Act ;
- (16) 'public analyst' means the Chemical Examiner and includes, in respect of any area, a person appointed under sub-section (3) of section 25 to be for that area the public analyst for the purposes of this Act ;
- (17) 'skimmed milk' means milk from which milk-fat has been extracted ;
- (18) 'rule' means a rule made under section 26 ;
- (19) 'unwholesome' or 'noxious' means harmful to health or repugnant to use by man.

Delegation of powers of the local authority.

3. (1) The local authority may delegate all or any of his powers and duties under this Act to such person or persons and in such manner as may be prescribed.

(2) Every local authority and every person to whom powers have been delegated under this section or who has been appointed under sub-section (1) of section 25, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Offences and exceptions.

4. (1) Every person who—

- (a) sells any food which is not of the nature, substance or quality of the article demanded by the purchaser ; or
- (b) sells, or for purposes of sale, stores, offers, exposes, manufactures or hawks about any food which is not of the nature, substance or quality which it purports or is represented to be ; or
- (c) abstracts from food any part of it so as to affect injuriously the

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nature, substance or quality thereof with intent that it should be sold in its altered state without notice of the alteration or sells any article so altered without making disclosure of the alteration; or

- (d) sells, or for purpose of sale, stores, offers, exposes, manufactures or hawks about milk, skimmed milk, cream, butter, ghee, cheese, channa, gur, mustard oil, cocoa-nut oil, gingili oil, ground-nut oil, linseed oil, or any other food which is not up to the standard or purity prescribed by the Provincial Government; or
- (e) sells, or for purposes of sale, stores, offers, exposes, manufactures or hawks about as food any article which has been rendered or has become noxious as food; or
- (f) suffering from a disease specified under rule, to be infectious or contagious, sells, or for purposes of sale, stores, offers, exposes, manufactures, hawks about or handles in any manner any food; or
- (g) for purposes of sale, mixes, colours, stains or powders or orders or permits any other person to mix, colour, stain or powder any food with any matter or ingredient so as to render the food injurious to health or fraudulently to increase the bulk, weight, or measure of the food or to conceal or debase the quality, nature or substance of the food or sells or, for purposes of sale, stores, offers, exposes or

hawks about any food so mixed, coloured, stained or powdered, shall be punished for the first offence with fine which may extend to one hundred rupees and for every subsequent offence with imprisonment of either description which may extend to three months or with fine which may extend to five hundred rupees or with both.

*Explanations.*—(1) Any food although not meant for sale as food but stored for the preparation of any other food for sale, shall, for the purpose of this section, be deemed to be stored for purposes of sale as food.

(2) Where any rules restrict the addition of any preservative or other ingredient or material to an article of food, the addition of any such ingredient or material to an amount not exceeding the limit specified by the rules shall not, for the purposes of this Act, be deemed to render the article injurious to health :

Provided that in the following cases no offence under this section shall be deemed to have been committed:—

- (i) where any innocuous material has been used or admixed in the composition or preparation of the food to render the same fit for carriage or consumption ; or
- (ii) where in the process of production, collection, preparation or conveyance of the food, some extraneous material has unavoidably been admixed therewith ; or
- (iii) where the food is the subject of a patent granted under any law for the time being in force and

is sold in the state required by the specification of the said patent; or

(iv) where the person charged with an offence under clause (g) of sub-section (1) proves to the satisfaction of the Court that he did not know that the food was so mixed, coloured, stained or powdered as aforesaid and that he could not with reasonable diligence have obtained such knowledge.

(2) In every prosecution under this section, the court shall presume that any food found in the possession of a person who is in the habit of manufacturing or storing like articles for sale has been manufactured or stored by such person for sale.

Presumptions to be made and pleas to be disallowed or allowed.

5. (1) In every prosecution under section 4, it shall be no defence to allege merely that the seller was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having bought only for analysis was not prejudiced by the sale.

(2) Where an employer is charged with an offence under this Act, he shall be entitled, on application duly made by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for the hearing and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he used due diligence to enforce the execution of this Act and that the said other person committed the offence without his knowledge, consent or connivance, the said other person shall be convicted and the employer shall be acquitted.

False warranties and descriptions.

6. (1) Every person —

- (a) who wilfully applies to an article of food a written warranty given in relation to any other article of food, or
- (b) who wilfully gives label with any article of food sold by him which falsely describes the article sold,

shall be punished for the first offence with fine which may extend to one hundred rupees and for every subsequent offence with fine which may extend to five hundred rupees or with imprisonment of either description which may extend to three months or both.

(2) Every person who in respect of an article of food sold by him whether as principal or as agent gives to the purchaser a false warranty in writing shall, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true, be punished for the first offence with fine which may extend to one hundred rupees and for every subsequent offence with fine which may extend to five hundred rupees or with imprisonment of either description which may extend to three months or both.

Power of local authority for purposes of inspection.

7. (1) Subject to any rule, the local authority, or any person duly authorised by him in this behalf may without notice enter any place where articles of food are being manufactured or stored or exposed for sale, at any time by day or night when the exposure for sale or manufacture is being carried on and at day time only in case of storage and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article.



(2) No claim shall lie against any local authority or any person duly authorised by him as aforesaid for any damage or inconvenience necessarily caused by the exercise of the powers under this section or by the use of any force necessary for effecting an entry into any place under this section.

(3) In any legal proceedings in respect of powers exercised under this section in which it is alleged that any food was not kept, exposed, hawked about, manufactured, prepared, stored, packed or cleansed for sale or was not intended for human food, the burden of proof shall lie on the party so alleging.

Power of local authority to seize adulterated food, etc.

8. (1) If any article intended for food appears to the local authority or person duly authorised by him in this behalf, to be unwholesome or adulterated or other than what it purports or is represented to be, or if any vessel or utensil used in manufacturing, preparing or containing such article appears to violate any rule, he may seize or carry away or secure such article, utensil or vessel in order that the same may be dealt with as hereinafter provided; but, in the case of oil or ghee intended for food, a sample of such article shall be left with the person from whom the article was seized, duly marked, sealed or fastened up in such manner as its nature permits.

*Explanation.*—The power conferred by this section on the local authority or person duly authorised by him in this behalf includes power to break open any receptacle or package in which any article of food may be contained.

(2) The person who seizes any article of food or sample thereof or utensils or vessels under this section shall, before removal, grant a receipt therefor to the person from whose possession such seizure was made.

Penalty for preventing inspection and seizure of adulterated food, etc.

9. Every person who shall in any manner whatsoever prevent the local authority or person duly authorised by him from exercising his powers under sections 7 and 8 shall be punished, where his act does not amount to an offence under the Indian Penal Code, with a fine which may extend to five hundred rupees. XLV of 1860.

Penalty for removing or interfering with articles seized.

10. Every person who shall remove or in any way interfere with an article secured under section 8 shall be punished with fine which may extend to five hundred rupees.

Samples of articles seized to be sent to the public analyst.

11. When any article of food seized under section 8 appears to the local authority or person duly authorised by him in this behalf to be adulterated or other than what it purports or is represented to be, he shall forthwith send a sample of such article to the public analyst appointed for the purpose for the local area concerned.

Production of articles, etc., seized before Magistrate and powers of Magistrate to deal with them.

12. (1) Articles of food or samples thereof, or utensils or vessels seized under section 8 shall as soon as possible be produced before a Magistrate:

Provided that where, in the case of unwholesome or noxious food, it is not possible to produce such article before a Magistrate immediately, the local authority or the person duly authorised in this behalf may destroy such articles in the presence of reliable witnesses who shall certify in the form prescribed the action taken by the local authority or the person duly authorised by him:

Provided also that where a sample of article has been sent to a public analyst, the article or sample thereof may be produced before the Magistrate after the receipt of the certificate of the public analyst:

Provided further that, where a sample of an article of food sent to the public analyst is certified by him to be not adul-

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terated or to be what it purports or is represented to be, the article and the vessel or utensil shall, unless otherwise provided for under rules, be returned at the cost of the local authority in whose area the seizure was made, to the owner or person from whose possession the same was seized.

(2) Whether or not complaint is laid before the Magistrate of any offence under the Indian Penal Code or under this Act, XLV of 1860. if it appears to the Magistrate on taking such evidence as he thinks necessary that any such article is unwholesome or adulterated or other than what it purports or is represented to be or any such utensil or vessel is of such kind or in such state as to violate the rules, he may order the same,

(a) to be forfeited to the local authority, or

(b) to be destroyed at the charge of the owner or person in whose possession it was at the time of seizure in such manner as to prevent the same being again exposed or hawked about for sale or used for human food or for the manufacture or preparation of or for containing any such article as aforesaid.

Power of purchaser  
to have food  
analysed.

13. Any purchaser of food shall be entitled on payment of fees in accordance with rule, to have such food analysed by the public analyst.

Power of Provincial  
Government to  
have articles  
analysed.

14. The Provincial Government may, in relation to any matter appearing to them to affect the general interests of the consumers of any article of food, direct any public servant to procure for analysis samples of such article of food and thereupon such public servant shall have all the powers of a local authority under this Act and this Act shall apply as if such public servant were the local authority.

Power to purchase compulsorily samples of food for analysis.

15. (1) Subject to rule, a local authority or any person duly authorised in this behalf may purchase at the cost of the local authority and at the local market rate any sample of food and may submit the same to be analysed by the public analyst.

(2) If a local authority or any person, authorised as aforesaid, proposes to purchase any food which such authority or person reasonably believes to be offered or exposed or manufactured or in the process of manufacture for sale or in course of transit or stored in any place for the purpose of sale and tenders the price for such quantity as is reasonably requisite for the purpose of analysis and the person in possession of such food for or for the purpose of sale, refuses to sell the same or to sell the same at the local market rate, the person so refusing shall be punished with fine which may extend to five hundred rupees.

Procedure when samples of food is purchased under section 15.

16. (1) Any person purchasing any food under section 15, shall after the purchase has been completed, forthwith notify to the seller or his agent selling the food, his intention to have the same analysed, and shall divide the food into three parts to be then and there separated and each part to be marked and sealed or fastened up in such manner as its nature permits.

(2) The said person shall deliver one of the parts duly sealed to the seller or his agent after obtaining his receipt therefor and shall retain one part for his future comparison and shall submit the third part to the public analyst, if he intends to have the article analysed; but if the seller or his agent from whom the sample is purchased refuses to accept the sealed portion meant for him and acknowledge receipt therefor, he shall be deemed to have received and acknowledged

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the same, if the sample is left at the place where the sample is taken in the presence of at least two witnesses.

Duty of public analyst.

17. The public analyst receiving any food for analysis shall divide the same into two parts and shall seal or fasten up one of those parts and shall analyse the other part and send to the local authority a certificate under his hand of the result of his analysis in the form (if any) prescribed by rule and a similar certificate together with the part sealed or fastened up as aforesaid to the purchaser of the food who shall retain the same in case proceedings shall afterwards be taken in the matter.

Certificate to be evidence of facts stated therein.

18. (1) Any document purporting to be a certificate under the hand of the public analyst may be used as evidence of the facts therein stated in any enquiry, trial or other proceedings under this Act.

(2) (a) In the course of any such enquiry, trial or other proceeding, the court may in its discretion and shall at the instance of the accused or the complainant if, within a time specified by the court, the accused or the complainant deposits in court the expenses of analysis, cause any food to be sent for analysis to the Chemical Examiner and the expenses of such analysis shall, unless deposited in court as aforesaid, be paid by the accused or the complainant as the court may by order direct:

Provided that the court shall not cause any food to be sent for such purpose if it is brought to the notice of the court that a certificate under section 17 in respect of such food has already been granted under the hand of the Chemical Examiner.

(b) On receiving such food, the Chemical Examiner shall analyse the same and send, in lieu of the certificate referred to

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in section 17, a certificate to the said court of the result of his analysis which may be used as evidence of the facts therein stated in such enquiry, trial or proceeding.

Prohibiting adulterants in places where ghee, butter, etc., is manufactured or sold.

**19.** (1) Whoever keeps or permits to be kept in any manufactory, shop, or place in which butter, ghee, wheat-flour, mustard oil or any article of food is manufactured, any substance intended to be used for the adulteration of such butter, ghee, wheat-flour, mustard oil or other article, shall be punished for the first offence with a fine which may extend to one hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees or imprisonment of either description not exceeding three months or both.

(2) If any article capable of being so used is found in such manufactory, shop or place, the court shall in any prosecution under this section presume, until the contrary is proved, that such article was intended to be used for the purpose of adulteration.

Application of this Act in case of food sold in unopened tin or packet.

**20.** In the case of any food sold or offered for sale or exposed for sale in an unopened tin or packet duly labelled, the provisions of this Act shall have effect subject to the following modifications, namely:—

- (1) The person so selling or offering or exposing such food shall not be deemed to have committed an offence under sub-section (1) of section 4 if he proves that he bought the food in the same unopened tin or packet and in the same condition in which it was so sold or offered or exposed, and that using due care and attention he believed such food, when he so sold or offered or exposed it, to be genuine.

(2) No person shall be required under section 15 to sell such food except in the unopened tin or packet in which it is contained.

(3) A person purchasing such food under section 15 may, instead of proceeding under section 16, submit it to the public analyst in the unopened tin or packet in which it is contained.

Cognizance of offences.

21. No prosecution under this Act shall be instituted except on the complaint of the purchaser or except with the order or consent in writing of the local authority or of a person authorised by the local authority in this behalf.

Offences not to be withdrawn or compounded without the permission of the Court.

22. No offence punishable under any of the sections of this Act shall be withdrawn or compounded except with the permission of the Court before which any prosecution for such offence is pending.

Jurisdiction.

23. No magistrate whose powers are less than those of a magistrate of the second class, shall try any offence under this Act.

Funds of the local authority to receive fines and meet expenditure.

24. (1) Subject to the provisions of sub-section (3), the amount of all fines realised under this Act shall be credited to the funds of the local authority within whose jurisdiction the offence is committed and the amount of all expenditure incurred under this Act except in cases of prosecutions instituted on complaint of the purchaser shall be paid from the funds of the local authority within whose jurisdiction the offence is committed.

(2) Subject to the provisions of sub-section (3) when a prosecution under any section of this Act results in the conviction of any person, the cost of the prosecution shall be fixed by the Court

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and shall be recoverable as if it were a fine from the person convicted and all sums so recovered shall be paid to the local authority except in cases of prosecutions instituted on complaint of the purchaser where such sums shall be paid to the complainant concerned.

(3) The Court shall also in all cases where any person is convicted under any section of this Act impose in addition to the other costs of the prosecution fixed under sub-section (2) and in addition to any penalty under any section of this Act, a fine of Rs. 15 to cover the cost of analysis. The fine shall be credited to Government except in cases of prosecutions instituted on complaint of the purchaser where it shall be paid to the complainant concerned.

Power to appoint  
local authority and  
public analyst.

**25.** (1) In respect of any area other than a municipality or a district board, the Provincial Government may appoint any authority or officer to be the local authority for the purposes of this Act.

(2) The Provincial Government may appoint any public servant to exercise the functions of any local authority under this Act in respect of any area and during the period that such appointment is in force no local authority shall exercise such functions in any such area.

(3) In respect of any area, the Provincial Government or, with the approval of the Provincial Government, the local authority, may appoint any person to be the public analyst for the purposes of this Act.

Power to make  
rules.

**26.** (1) The Provincial Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.



(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules —

- (a) regulating the exercise of powers of inspection of local authority under section 7;
- (b) prescribing the fees to be paid to the public analyst under section 13;
- (c) regulating or restricting the purchase of samples of food for analysis under section 15;
- (d) prescribing the form of certificate to be granted by the public analyst under section 17;
- (e) prescribing qualifications for appointment as public analyst under sub-section (3) of section 25;
- (f) as to the punishment, including suspension and removal by a local authority and by the Provincial Government of the public analyst appointed by such local authority;
- (g) prescribing the classes or qualifications of persons to whom and the conditions on which the local authority may under section 3 delegate his powers;
- (h) determining the limits within which the local authority may exercise his powers under this Act;
- (i) prescribing the standard of purity for milk, cream, butter, ghee, cheese, channa, gur, mustard oil, ground nut oil, cocoanut oil, linseed oil, gingelly oil or

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- any other food and determining what deficiency in any of the normal constituents of any article of food or what addition of extraneous matter shall raise a presumption until the contrary is proved that such food is injurious to health or is not of the nature, substance or quality as it purports to be ;
- (j) specifying the disease which for purposes of this Act are contagious or infectious or both ;
- (k) prohibiting or regulating in the interests of public health—
- (i) the addition of any colouring matter, preservatives, water or other diluent or adulterant to any food ;
- (ii) the abstraction of any ingredient from any food ;
- (iii) the sale of any food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated ;
- (l) authorising the persons taking samples of any food for the purpose of analysis under this Act to add preservatives to such sample for the purpose of maintaining it in a suitable condition for analysis and regulating the nature of such preservatives and the method of adding them ;
- (m) prescribing in the interests of public health, the state in which utensils and vessels used for manufacturing, preparing or containing any food intended

Power of  
Analyst  
sample.

Repeal.

for sale shall be kept and prohibiting the use of utensils and vessels made in whole or in part of materials likely to injure such food;

(n) providing for the manner in which any receptacle containing dried, condensed or skimmed milk is to be labelled or marked.

(3) In making any rule under clauses (k), (m) and (n) of sub-section (2) the Provincial Government may provide that a breach thereof shall be punishable—

(a) in the case of a first conviction with fine which may extend to one hundred rupees, and

(b) in the case of a subsequent conviction with fine which may extend to five hundred rupees.

Power of Public Analyst to take sample.

27. A public analyst may take sample of food from any place. No prosecution shall be instituted on such samples.

Repeal.

28. The enactments mentioned in the schedule so far as they are in force in Orissa are hereby repealed.

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SCHEDULE.

(See section 28.)

1. The Bihar and Orissa Prevention of Adulteration Act, 1919 (Bihar and Orissa Act II of 1919).
2. The Madras Prevention of Adulteration Act, 1918 (Madras Act III of 1918).
3. The Central Provinces Prevention of Adulteration Act, 1919 (Central Provinces Act II of 1919).