A SURVEY OF THE CRIMINAL JURISPRUDENCE FOR COMBATING FOOD ADULTERATION IN NIGERIA AND INDIA

Abstract
Food adulteration is a global problem and is a growing phenomenon. A successful attack on the food supply chain could result in significant morbidity and mortality, economic and trade consequences, a strain on public health systems and political instability. Different countries of the world have made laws for checkmating the monster of food adulteration. These countries include Nigeria and India. This paper attempts a comparative appraisal of the legal framework for combating food adulteration in Nigeria and India. The paper found that the inclusion of raw and unprocessed foods in the legal definition of food in India affords India a better platform for combating food adulteration. The paper also found that India has an extensive institutional framework for the implementation of laws geared towards the combating of food adulteration. The paper further found that both countries did not make any provision in their laws for combating adulteration of food sold and bought on the internet. Similarly, there was no provision for traceability of food items sold in the market in the laws of both countries. Although, Nigeria has some lessons to draw from the Indian legal framework for combating food adulteration, like Nigeria however, India is also missing out some of the new perspectives on effective legal regime for combating food adulteration.

Keywords: Food, Adulteration, Contamination, Processed Food, Legal Framework, Unwholesome Products

1. Conceptual Clarifications

Food
The Food and Drugs Act defined ‘food’ to include any article manufactured, processed, packaged, sold or advertised for use as food or drink for human consumption, chewing gum, or any ingredient that may be mixed with food for any purpose whatever, and excludes Live animals, birds of fish; articles or substance used as drugs.¹ This same definition was reiterated in the Food Drug and Related Products (Registration Etc.) Act.² This purport that food in Nigeria remains whatever is sold or advertised; in order words it shall be in the course of a commercial transaction. The said definition also covers ingredients like sweeteners and additives that may be mixed with food. Food Safety Standards Act of India defined food to mean:

¹ Section 21 of the Food and Drugs Act Cap F32 LFN 2004
² Section 13 of the Food and Drugs Act Cap F33 LFN 2004
any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances.

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality.3

This latter definition removed the hitherto confusion as to whether the notion of food is confined to processed as against unprocessed foods.4 The notion of food is in relation to whatever is a subject matter of human consumption. It may be processed, partially processed or unprocessed. This is more elaborate and commendable. The Indian Act also covered the GM foods, which are not envisaged and captured by the Nigeria Act.

Adulteration

The word adulterate was defined as the act of debasing a commercial commodity with the object of imitating or counterfeiting a pure or genuine commodity with the object of imitating or counterfeiting a pure or genuine commodity or substituting an inferior article for a superior one in order to gain an illegitimate profit.5 The Adulteration of Product Act, 1958 provided as follows:

‘adulterate’ means to falsify, deteriorate or increase the apparent bulk or weight or conceal the inferior quality of produce by the combination, admixture or addition therewith or thereto of some foreign, superfluous or inferior substances, matter or thing whether deleterious or not, or by the use of artificial means and includes abstraction from produce, part of it so as to injuriously affect its nature, substance or quality, or soaking or manipulating it so as to increase its bulk or weight.6

In view of the foregoing definitions, adulteration includes the addition of some extraneous substances, the abstraction of some compositional ingredients, failure to comply with the prescribed standard or

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3 The Food Safety Standards Act of India 2006 section 3(j); See also Section 2 of Adulteration Act 1954
6 Section 12 of The Adulteration of Product Act, United Kingdom(UK)1958
the substitution of inferior ingredients for superior ones. It is not necessary that the adulterated product should be injurious to health for an offence to be committed. Adulteration implies mixing of something inferior or spurious to any commodity which reduces its purity or makes it harmful for use. Any material which is or could be employed for the making the food unsafe or sub-standard or misbranded or containing extraneous matter.

**Food Adulteration**

The Indian Prevention of Food Adulteration Act provides that: an article of food shall be deemed to be adulterated:

(a) If the article sold by a vendor is not of the nature, substance or quality, demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality, which it purports or is, represented to be;
(b) If the article contains any other substance which affect, or if the article is so processed as to affect injuriously the nature, substance or quality thereof;
(c) If any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature substance or quality thereof;
(d) If any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof.
(e) If the article has been prepared, packed or kept under in sanitary conditions whereby it has become contaminated or injurious to health;
(f) If the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;
(g) If the article is obtained from a diseased animal;
(h) If the article contains any poisonous or other ingredient which renders it injurious to health:
   (i) If the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;
4[(j) If any coloring matter, other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed coloring matter which is present in the article are not within the prescribed limits of variability;]
(k) If the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

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7 Section 3 of Food Safety Standards Act 2006
8 1954
5[(l) If the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability but which renders it injurious to health;
(m) If the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:
Provided that, where the quality or purity of the article, being a primary food has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.⁹

An article is not deemed to be adulterated where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, solely due to natural causes and beyond the control of human agency. Also, where two or more articles of primary food are mixed together and the resultant article of food is stored, sold or distributed under a name, which denotes the ingredients thereof; and is not injurious to health, such an article is not deemed to be adulterated. The phrase `food adulteration’ can be simply defined- as an act of intentional debasing the quality of food offered for sale either by the admixture or substitution of inferior substances or by the removal of some valuable ingredient. It also can be defined as the addition or mixing of interior harmful, substandard, useless or unnecessary substances to foods. This spoils the nature and quality of food items and is considered food adulteration. A substance added to a food-item to reduce its quality in order to increase its quantity is called as an adulterant the addition of adulterants is called adulteration. Any food item may be considered as adulterated if its nature and quality are not up to the standard. Regrettably, the Nigerian Laws did not attempt any definition of ‘adulterated food’. The word ‘adulterated’ was only used in relation to drug. ⁹ Instead of ‘adulteration’, the Nigerian Act used the term adulteration. The meaning of adulteration varies from country to country on the basis of municipal law. If a food exceeds tolerances and regulatory limits of the country, it will be considered adulterated. It is to be noted that the basic contention of the term `food adulteration’ is fully relevant and inter-related with the terms/factors like `food safety’ and `food security’.

**Unwholesome Processed Food**
This was defined to mean any food product which:

(a) consists in whole or in part, of any filthy, putrid or decomposed substance; or
(b) has been prepared, packaged or stored under insanitary conditions where it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
© is packed in a container composed in whole or in part of any injurious or deleterious substance which may render the content injurious to health; or
(d) bears or contains for the purposes of colouring only a colour other than one which is prescribed; or
(e) contains any harmful or toxic substance which may render it injurious to health or has been mixed with some other substance so as to reduce its quality or strength.\textsuperscript{10}

**Misbranded Food**

This is alien to Nigerian food law. An article of food is ‘misbranded’

(A) if it is purported, or is represented to be, or is being;

(i) offered or promoted for sale with false, misleading or deceptive claims either;

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or container the article or the label on such package:

(B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but-

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labeled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is false; or

(C) if the article contained in the package –

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labeled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

\textsuperscript{10}Counterfeit and Unwholesome Processed Food (Miscellaneous Provision) Act Cap C34 Laws of the Federation of Nigeria 2004.
(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or (iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.\textsuperscript{11}

**Food Fraud**

Food fraud is committed when food is illegally placed on the market with the intention of deceiving the customer, usually for financial gain. More simply, it is the act of defrauding food buyers for economic gain. Food fraud involves criminal activity that can include mislabelling, substitution, counterfeiting, misbranding, dilution and adulteration. It is noteworthy that food adulteration is one aspect of food fraud. Food fraud therefore commonly encompasses a wide range of deliberate fraudulent acts. Food fraud is a collective term used to encompass the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging; or false or misleading statements made about a product, for economic gain.

**Food Crime**

Food crime involves any criminal conduct that affects the safety or authenticity of food. Food crime is punishable under the criminal law of various countries. Punishment varies from one country to the other. Food crime is a subset of food adulteration. This is because there are aspects of food adulteration that may involve only civil wrongs as against criminal liability.

**2. Rationale for Combating Food Adulteration**

The greatest challenge facing the Nigerian food consumer of today is in the area of fake and adulterated foods. Fake and adulterated foods have debilitating effect on the health of the consumers of food today. Adulteration of food may happen in any of the layers or steps in the process of reaching the food from the farm or production to the fork of the consumers. Food adulteration leads to many health problems from curable to incurable disorders.\textsuperscript{12} It is a major cause of death, disability and so on.\textsuperscript{13} The statistics of consequences of food adulteration has risen from eight percent in 2008-2009, to twenty percent in 2012-2013.\textsuperscript{14} Adulteration in food also decreases our moral and social values. A

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\textsuperscript{11} The India Food Safety Standards Act section 3(z)(f)

\textsuperscript{12} A number of diseases including cancer, convulsion and miscarriage, respiratory problem, disorder of some organs of the body; asthma, sore throat, larynx constriction, bronchitis, skin infection, allergic reaction, diarrhea, haematuria, circulatory failure, numbness, dizziness, kidney failure, stomach, cancer, nervous disorder and other diseases;

\textsuperscript{13} Daily Hunt Food Adulteration...Slow Death https://m.dailyhunt.in 26/07/18

\textsuperscript{14} (Saumya Sinha IPLEADERS : ‘Laws for the Prevention of Food Adulteration in India’ available at blog.ipleaders accessed on 17/11/18. According to the records of health and family welfare ministry
large number of people and companies are engaged in this kind of black business of adulterated food production, manufacture, wholesale and retailing. The entire chain involved many people in a criminal act which requires a tremendous government effort with a proper infrastructure to combat this monster. Governments of different countries of the world have enacted laws to stem the scourge.

3. Legal Framework for the Prevention of Food Adulteration in Nigeria
The legal framework for combating food adulteration in Nigeria involves extant laws, and institutions. It can be observed that the laws for combating food adulteration in Nigeria are not contained in a single enactment. It does appear that only one institution to wit; the National Agency for Food and Drug Administration Control (NAFDAC) is responsible for combating food adulteration in Nigeria. However, by virtue of the fact that food adulteration is a crime, the duty of combating food adulteration extends to other institutions concerned with the prevention prosecution of crime.

National Agency for Food and Drug Administration and Control Act 1993
This Act was enacted for the purposes of establishing the National Agency for Food and Drug Administration and Control with the functions, among others, to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals. The Agency is empowered to regulate the administration of foods, drugs and other regulated products in Nigeria. Regulated products have been defined under the Act to include food, drug, medical devices, cosmetics and bottled water. The Act did not however define ‘food’ but defined only drug and cosmetics. The implication of this omission is that what constitutes food for the operation of the Act is at the discretion of the Agency. Accordingly, the Agency does not oversee the combating of adulteration of raw and unprocessed foods. Like its predecessors, the focus of the institutional oversight of the agency is on drugs, cosmetics and processed foods. The maximum punishment for the contravention of the provisions of the Act is as prescribed under Regulations made pursuant to the Act. Where no punishment is prescribed under such regulations, a maximum punishment of fifty thousand naira or imprisonment for a term not exceeding one year is imposable by the court. The Prepackaged Food Regulation that directly affects food adulteration did not make any significant provision for sanctions. However, it prohibits sale of unlabeled pre-packaged food, and deceptive trade marks. The Food Products Registration Regulation imposes a penalty of fifty thousand naira for any contravention of its provision. Food Products (Advertisement Regulations also imposes a penalty of fifty thousand naira for any

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15 Long title of this Act.
16 Section 5.
17 Section 25(3).
18 Section 7
contravention of its provision. It also provides for the prohibition of the offending person from carrying on the advertisement of food products in addition to the fine.\textsuperscript{19}

**Counterfeit and Unwholesome Processed Foods Act**

This Act did not proffer a definition of the term, ‘adulterated food’. It however defined ‘unwholesome processed food’ to mean any food product which:

(a) consists in whole or in part, of any filthy, putrid or decomposed substance; or
(b) has been prepared, packaged or stored under insanitary conditions where it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
(c) is packed in a container composed in whole or in part of any injurious or deleterious substance which may render the content injurious to health; or
(d) bears or contains for the purposes of colouring only a colour other than one which is prescribed; or
(e) contains any harmful or toxic substance which may render it injurious to health or has been mixed with some other substance so as to reduce its quality or strength.\textsuperscript{20}

It is obvious that this Act in its definition of ‘unwholesome processed food contemplated the adulteration of food as its basis for declaring a food item ‘unwholesome’. The long title of the Act however, in the use of the word ‘processed food’ appeared to have excluded raw and unprocessed food from the ambit of its definition of food adulteration. This is the major lacuna in this Act. For this Act to serve its purpose as a combative legislature against food adulteration, the word ‘processed’ must be deleted from the title of the Act. This is because adulteration of food in present day Nigeria extends to raw and unprocessed foods. The maximum punishment stipulated under this Act is a fine not exceeding the sum of N500,000 or imprisonment for a term of not less than five years or more than fifteen years or to both such fine and imprisonment.\textsuperscript{21}

**Food and Drugs Act\textsuperscript{22}**

This Act as the name suggests aims at the regulation of the quality of food products that are manufactured in Nigeria. The Food and Drugs Act defined ‘food’ to include any article manufactured, processed, packaged, sold or advertised for use as food or drink for human consumption, chewing gum, or any ingredient that may be mixed with food for any purpose whatever, and excludes Live animals, birds of fish; articles or substance used as drugs.\textsuperscript{23} This definition should be interpreted to

\textsuperscript{19} Section 19. Also Food Grad (Table or Cooking) Salt Regulations. (1993) No. 15. S1. 14 of 1996
\textsuperscript{20} Section 12
\textsuperscript{21} Section 3(1)(a)
\textsuperscript{22} Cap F32 Laws of the Federation of Nigeria 2004
\textsuperscript{23} Section 21
include all kinds of food. This will not however be the situation if the words ‘sold or advertised’ are read to be dependent on the preceding words of ‘manufactured’, ‘processed’ or ‘packaged’. The latter interpretation will confine the meaning of food used in the Act to processed foods only, The Act provides that no person shall sell, import, manufacture or store any article of food that is adulterated.\textsuperscript{24} Regrettably, this Act did not define the meaning of adulteration in relation to food.\textsuperscript{25} Other words closely related to ‘adulterate’ like harmful, poisonous, food which is unfit for human consumption and the phrase ‘unsanitary conditions’ were defined in relation to food, by the Act.\textsuperscript{26} These invariably refer to adulterated food. The maximum punishment stipulated under this Act a fine of not less than fifty thousand naira or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

\textbf{Foods Drugs and Related Products (Registration, Etc) Act}

This Act provides for the An Act to regulate the manufacture, importation, exportation, advertisement, sale or distribution of processed food, drugs and related products in Nigeria. It is apposite to mention that food product registration is a veritable tool in combating adulterated food. This is because registration divulges the minutest detail of a food which adulteration will cover in a bid to deceive. Unfortunately, the Act specifically limited its application to food processing industries as distinct from raw foods and other unprocessed foods. Also, it did not define ‘food’ nor ‘food adulteration’. The Act prescribes a maximum punishment of a term not exceeding two years or a fine not exceeding fifty naira for any contravention of the provision of the Act.\textsuperscript{27} Where the contravention was at the instance of a corporate body, it shall be a fine not exceeding N100, 000.\textsuperscript{28}

\textbf{Standard Organization of Nigeria (SON) Act}

This Act was made to establish the Standards Organization of Nigeria to standardize methods and products in Nigerian industries and to provide for other matters connected thereto.\textsuperscript{29} The Act established the Standard Organization of Nigeria Act (SON) as a body corporate.\textsuperscript{30} The Organization was vested with the responsibility of preparing standards for products and processes and for ensuring compliance with the Federal Governments Policies on standards and quality with regards to both locally manufactured and imported goods in Nigeria.\textsuperscript{31} The maximum punishment prescribed under this Act is a term of imprisonment not exceeding one hundred thousand naira or to imprisonment for a

\textsuperscript{24} Section 1 (2)
\textsuperscript{25} Section 21 of the Food and Drugs Act Cap F32 Laws of Federation of Nigeria 2004 as amended.
\textsuperscript{26} \textit{ibid}
\textsuperscript{27} Section 6.(1)(a)
\textsuperscript{28} Section 6(1)(b).
\textsuperscript{29} The Long Title to the Act
\textsuperscript{30} Section 1(1) of the Act
\textsuperscript{31} Section 5 of the Act.
term not exceeding five years.\(^{32}\) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other official of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished.\(^{33}\)

**Consumer Protection Council Act**

The Act established the Consumer Protection Council as a body corporate, capable of suing and being sued in its corporate name.\(^ {34}\) In the exercise of the said function the Council shall be guided by considerations that are consistent with the public health and safety standards in relation to products in the Nigerian markets.\(^ {36}\) It shall be the duty of the manufacturer or distributor of a product, on becoming aware after such a product has been placed on the market, of any unforeseen hazard arising from the use of such product, to notify immediately the general public of such risk or danger and cause to be withdrawn from the market such product.\(^ {37}\) The maximum punishment prescribed under the Act is a term of imprisonment not less than five years or to a fine of N= 50,000 or to imprisonment of five years or to both such fine and imprisonment.\(^ {38}\)

**Criminal Code and Penal Code**

The Criminal Code\(^ {39}\) and the Penal Code\(^ {40}\) contain enabling provisions which in their application tend to combat food adulteration in Nigeria. These provisions are aimed at death or bodily injury so as to protect the right to life of persons. Under the Criminal Code, offences in relation to food adulteration constitute offences against public health.\(^ {41}\) It is discernible from the foregoing that the Criminal Code does not take into account whether a food substance is beneficial to the body nutritionally, but whether its administration or consumption is harmful to the individual or the public at large. Under the Code, it is immaterial whether the food in question is nutritive or beneficial to health, in so far as its administration or consumption is not prejudicial to health and is not likely to cause bodily injury or endanger life or to be a threat to public health. The ultimate objective under the Criminal Code, it seems, is the protection of life and health of the people.

\(^{32}\) Section 15  
\(^{33}\) Section 20  
\(^{34}\) Section 1(1)  
\(^{36}\) Section 3(a-f).  
\(^{37}\) Section 9(1)  
\(^{38}\) Sections 10, 11 and 12 of the Act  
\(^{39}\) Section 243 of the Criminal Code, Cap.C38 LFN 1990  
\(^{40}\) Cap P3, LFN 2004  
\(^{41}\) Section 243(2) *ibid*
4. A Survey of Legal Framework for Combating Food Adulteration in India
The legal framework for combating food adulteration in India as in the case of Nigeria is not contained in one single enactment. They are scattered in different laws. However, one unique feature of the Indian legal framework is that it sets out to combat food adulteration directly using some specific laws.

Prevention of Food Adulteration (PFA) Act 1954
This is the first most striking legislation directed at combating food adulteration in India.\textsuperscript{42} The Act embodies six other subsidiary legislations, namely; Food Produce Order,\textsuperscript{43} Meat Food Produce Order,\textsuperscript{44} the Vegetable Oils Packaging Production(Control) Order,\textsuperscript{45} the Edible Oils Packaging (Production)Order\textsuperscript{46} The Solvent Extracted Oil (The Oiled Meal and Edible Flour Control Order,\textsuperscript{47} and Milk and Milk Produce Oder.\textsuperscript{49} This Act has been repealed and replaced by the Food Safety Standards Act.\textsuperscript{50} This repeal may not be unconnected with changing needs.\textsuperscript{51}

Food Safety Standards Act 2006
The Food Safety Standards Act and the Rules and Regulations made thereunder, consolidated laws relating to food in India.\textsuperscript{52} The Act was established to bring uniformity and a single reference point for all matters relating to food safety and food standards. The Act made a shift from the multi-departmental and multi-level control to a consolidated system of food control system. The Act is enforced by two statutory authorities- Food Safety and Standards Authority of India (FSSAI) at the centre and State Food Safety Authority (SFSA) at the State level.\textsuperscript{53} This was because adulteration of foodstuff was included in the concurrent list in the Constitution of India. The primary objective of the food authority is to lay down science based standards\textsuperscript{54} for articles of food and to regulate their manufacture, storage, distribution, sale and import of food in order to ensure availability of safe and

\textsuperscript{42} The Prevention of Food Adulteration (PFA)1954.  
\textsuperscript{43} 1955  
\textsuperscript{44} 1973.  
\textsuperscript{45} 1947  
\textsuperscript{46} 1998  
\textsuperscript{47} 1967  
\textsuperscript{49} 1992  
\textsuperscript{50} 2006  
\textsuperscript{51} 2006  
\textsuperscript{52} Section 4  
\textsuperscript{53} Section 29  
\textsuperscript{54} Section 43 of the Act gives out the responsibility to the Food Authority to notify food laboratories and research institutions accredited by the National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency for the analysis of food samples.
wholesome food for human consumption. The Act made elaborate provisions for the regulation of imported food. It clearly prohibits the importation of unsafe, misbranded, substandard food or food containing extraneous matter in contravention of any other provision of the Act or the rules and regulations made thereunder. It is indeed paradoxical that the Indian legislatures are only bothered about imports foods products whereas no singular provision was made for preventing adulteration of food for export. The Act made provisions for the general principles of food safety to be followed by the various authorities while implementing the provisions of the Act. These provisions aimed at achieving an appropriate level of protection of human life and health and the protection of consumers’ interests. Food businesses are required to register and get licensee from the Food Standard Authority. The Act also made provisions with respect to the adjudication of the matters related to food safety and standards. Food Safety Appellate Tribunal hears appeals from the decisions of the Adjudicating officer. The Act prescribed a time limitation of one year for any court to take cognizance of an offence under this Act. The said time limit for the prosecution runs from the date of the commission of the offence. However, the Committee of Safety may for reason to be recorded in writing extend this time to three years. Interestingly, the Act imposes/ special responsibility for food safety on the manufacturers, packers, wholesalers, distributors and sellers. The maximum penalty stipulated under the Act is ten lakhs and a term of imprisonment not less than seven years but which may extend to imprisonment for life. Apart from penalty and punishment, the person contravening the provisions of the Act may also be held liable to pay compensation to the victim or the legal representative of the victim if such contravention has led to death or injury.

Indian Penal Code
Apart from these laws and regulations, there are provisions under the Indian Penal Code which deal with food adulteration. Chapter XIV of the Indian Code lays down provisions dealing with ‘offences

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55 Section 16
56 Section 25
57 ibid
58 Section 18 of the FSSA
59 Section 31, Food Safety and Standards Act, 2006.
61FSSAI annual reports.
62 section 68
63 section 70.
64 Section 77
65 ibid.
66 proviso to sect 77
67 Section 27
68 Section 59
69 Section 65
affecting the public health, safety, convenience, decency, and morals’. It provides that adulteration or sale of such food or drink is an offence punishable with an imprisonment which may extend to six months or fine or both. However, some states like Uttar Pradesh and West Bengal considered it insufficient punishment and made amendments in the provision with respect to punishment in the year 1970. The state amendment has made the offence punishable with imprisonment for life along with the liability of fine.

5. Comparing Nigerian and Indian Positions
First, there is no specific legislation dealing with food adulteration in Nigeria such as the Indian Food Standards Safety Act. Second, there is a time limitation of between one to three years for prosecuting food adulteration misconduct or crimes. In Nigeria, the general principle is that time does not run against the State. At first glance, this may appear to portend greater latitude for prosecuting food adulteration offenders in Nigeria. However, this is not truly the case because there are no specific laws targeted against food adulteration in Nigeria. Furthermore, the Indian legal framework provides for compensation to victims of food adulteration. This is not the case with Nigeria where compensation of victims of crimes are not in contemplation in extant laws. The Indian laws also make allowance for the federating units to extend the punishment for food adulteration up to life imprisonment. It is obvious that this posture will serve better deterrent purposes to the Indian criminal justice system. Conversely, the Nigerian legal framework provides for a maximum of five-year imprisonment for food adulteration offences. This will certainly reduce the deterrent value of punishment in the Nigerian laws. Again, there are no provisions for apprehending and prosecuting those selling adulterated food products on the internet in both the Nigerian and Indian criminal law jurisprudence. There are also no provisions for the tracing of of the origin of adulterated food sold in the food markets of both countries. Finally, the enforcement mechanism against food adulteration related offences are more efficient in their multi-sectored and multi-institutional perspectives. The Indian Act also imposed special responsibilities for food safety on the manufacturers, packers, wholesalers, distributors and sellers. This is commendable as it extends responsibility for food safety to all possible food handlers in the food chain other than the manufacturers of the said foods. The Indian Act has a unique provision for the compensation of the dependants of a deceased where the unsafe food has resulted to loss of life. Such dependents are entitled to an award of compensation within thirty days of the occurrence of the loss. There is no such provision under extant Nigeria food laws. The maximum penalty stipulated under the food laws of Nigeria is of little or no deterrent effect. The punishment for food adulteration in Nigeria is five hundred thousand naira fine or imprisonment for a term of not less than five years. The Indian Act on the other hand provides for a fine of ten lakhs and a term of imprisonment of not less than seven years but which may be extended to imprisonment for

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70 Sections 272 and 273
71 (Book –Rathan lal and Dheeraj lal The Indian Penal code 34th Edition 2014); Jatin Gandhi jan 18 2018 hundustan hindustantimes.com. FSSAI Proposes Life imp rs 10 lakh fine for food adulterators m. economnioctimes.com.June 26 /06/18
72 Section 27
73 Section 65
The Nigerian criminal code and the Indian criminal code criminalized the act of food adulteration. Chapter XIV of the Indian Code lays down provisions dealing with ‘offences affecting the public health, safety, convenience, decency, and morals’. Adulteration or sale of such food or drink is an offence punishable with an imprisonment, which may extend to six months or fine or both. However, some states like Uttar Pradesh and West Bengal considered it insufficient punishment and made amendments in the provision with respect to punishment in the year 1970. The state amendment has made the offence punishable with imprisonment for life along with the liability of fine.

6. Conclusion and Recommendations

Nigeria and India are both commonwealth countries. However, India has come a long way ahead of Nigeria in their legal framework for the combating of food adulteration. This may be due to a fact that the Nigerian constitution did not include the right to save food in its justice able sections. In India, the right to safe food is a fundamental constitutional right. The legal framework for food adulteration in India is therefore designed to reflect its constitutional posture. This is not the case in Nigeria because none of the food laws gave a concise meaning of the term ‘food adulteration’. The operative laws of a country determine what constitutes ‘food adulteration and food’. Therefore, the extant laws should in any possible amendment proffer elaborate definition of food as well as adulteration. Such definition should also capture emerging trends in food trade, safety and production. This will extend more protection for food consumers and prevent food adulteration. These laws should clearly outline implementation strategies and the laws must provide for a better enforcement regime so that all instances of non-compliance can be easily identified and action taken promptly by the proper authority. Control of food adulteration is a multi-sectored responsibility. Many ministries and agencies are involved. The roles and responsibilities of the concerned ministries and agencies must be clear and should cover the whole food chain from farm-to-table. There should be prompt and overall coordination for food safety and food control at the national level. There should be clear delineation of roles and duties amongst the various food agencies. Conflict of roles exists amongst NAFDAC, SON and CPC in Nigeria with respect to issues like standardization certification. Nigeria should borrow a leaf from India in adopting a more proactive legal framework for the prevention and control of food adulteration in view of the danger posed to human health by food contamination and adulteration. For example, stiffer punishments should be meted out to food adulterators in Nigeria as is the case with India. It is however noteworthy that some adulterated food that find their way into the Nigeria food market are traced to India. In view of this, Nigeria should collaborate with India through bilateral treaties to ensure that food exported from India to Nigeria meet the Indian food safety requirements.

74 Section 59
75 Section 272 and 273,
76 Rathan lal and Dheeraj lal op. cit.