

**STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION
(2008-09)**

(FOURTEENTH LOK SABHA)

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(DEPARTMENT OF CONSUMER AFFAIRS)**

The Legal Metrology Bill, 2008

TWENTY- NINTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2009/Magha, 1930 (Saka)

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MINISTRY OF CONSUMER AFFAIRS, FOOD AND
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(DEPARTMENT OF CONSUMER AFFAIRS)

The Legal Metrology Bill, 2008

Presented to Lok Sabha on

Laid in Rajya Sabha on



LOK SABHA SECRETARIAT
NEW DELHI

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**COMPOSITION OF THE STANDING COMMITTEE ON FOOD,
CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION – 2008-2009.**

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
Lok Sabha**

2. Shri Govinda Aroon Ahuja
3. Shri Suresh Angadi
4. Shri Alakesh Das
5. Shri Atma Singh Gill
6. Shri G.V. Harsha Kumar
7. Shri Abdul Mannan Hossain
8. Shri Baliram Kashyap
9. Shri Avinash Rai Khanna
10. Shri Wangyuh W. Konyak
11. Shri Parsuram Majhi
12. Shri Sadashivrao Dadoba Mandlik
13. Shri Harikewal Prasad
14. Shri Munshi Ram
15. Shri Ghuran Ram
16. Shri Francisco Cosme Sardinha
17. Shri Daroga Prasad Saroj
18. Adv. (Smt.) P. Satheedevi
19. Vacant
20. Vacant
21. Vacant

Rajya Sabha

22. Smt. Mohsina Kidwai
23. Shri Mangala Kisan
24. Shri Shantaram Laxman Naik
25. Shri Kanjibhai Patel
26. Shri Rajniti Prasad
27. Shri Parshottam Khodabhai Rupala
28. Shri Ram Narayan Sahu
29. Shri Matilal Sarkar
30. Shri Veer Singh*
31. Vacant

* Nominated to the Committee w.e.f. 27 January, 2009.

Secretariat

- | | | | |
|----|----------------------|---|---------------------|
| 1. | Shri A.K. Singh | - | Joint Secretary |
| 2. | Smt. Veena Sharma | - | Director |
| 3. | Shri B. S. Dahiya | - | Deputy Secretary-I |
| 4. | Shri Jagdish Prasad | - | Deputy Secretary-II |
| 5. | Shri Rakesh Bhardwaj | - | Executive Officer |

INTRODUCTION

I, the Chairman of the Standing Committee on Food, Consumer Affairs and Public Distribution (2008-2009) having been authorized by the Committee to submit the Report on their behalf, present this Twenty-ninth Report on The Legal Metrology Bill, 2008 of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs).

2. The Legal Metrology Bill, 2008 was introduced in Rajya Sabha on 24 October, 2008. Hon'ble Speaker referred the Bill to the Standing Committee on Food, Consumer Affairs and Public Distribution under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha on 5 November, 2008. For wider consultations on the Bill the Committee invited officials of Indian Institute of Legal Metrology, Ranchi one of the premier institutions in the country on legal metrology. The Committee also held discussions on the Bill with the representatives of State Governments of Rajasthan, Gujarat, Maharashtra and Andhra Pradesh during their study visit to these States during January/February, 2009. Thereafter, the Committee took evidence of representative of Department of Consumer Affairs held on 17.02.2009. The draft report was considered and adopted by the Committee at their sitting held on 19 February, 2009.

3. The Committee wish to express their thanks to the representatives of Indian Institute of Legal Metrology, Ranchi for tendering evidence before the Committee and also for furnishing their views/suggestions to the Committee.

4. The Committee also express their thanks to the officials of Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) for tendering evidence before the Committee and also for furnishing to the Committee their detailed information/material desired in connection with the examination of the Bill.

5. For facility of reference and convenience, observations/recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI ;
19 February, 2009
Magha, 1930 (Saka)

DEVENDRA PRASAD YADAV
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution.

CHAPTER-I

INTRODUCTORY

In India, uniform standards of weights and measures based on the metric system, were established in the year 1956, which were revised in the year 1976 with a view to give effect to the international system of units. For this, the Standards of Weights and Measures Act, 1976 was enacted to establish standards of weights and measures to regulate inter-state trade or commerce in weights and measures and other goods which are sold by weight, measure or number. In the year, 1985, the Standards of Weights and Measures (Enforcement) Act, 1985 was enacted for enforcement by the State Governments of the standards of weights and measures established by or under the Standards of Weights and Measures Act, 1976.

1.2 The Ministry of Food, Consumer Affairs and Public Distribution (Department of Consumer Affairs), having noted that there has been technological advancement in Legal Metrology in measuring instruments, necessitating a review of the Acts to make them simple, eliminate obsolete regulations, ensure accountability, bring transparency and to empower consumers for protecting their rights, proposed two amendment Bills viz., (i) the Standards of Weights and Measures (Amendment) Bill, 2005 and (ii) the Standards of Weights and Measures (Enforcement) Amendment Bill, 2005 to amend the existing Acts viz, (i) Standards of Weights and Measures, 1976 and (ii) the Standards of Weights and Measures (Enforcement) Act, 1985 which were introduced in Rajya Sabha on 10.03.2005. Hon'ble Speaker referred the above said two Bills to the Committee on Food, Consumer Affairs and Public Distribution (2005-06) for examination and report. A large number of amendments were proposed in these two Bills. Out of the total of 160 Sections in both the Acts, 87 Sections were proposed to be amended. Further, 21 Sections were to be omitted and 13 new Sections were to be inserted.

1.3 The Bills were made available on the web-site of Lok Sabha <http://www.parliamentofindia.nic.in> on Internet and also telecast on television for general public. Also, the comments/suggestions on the said Bills were invited from the public at large. The Committee received a large number of representations/memoranda from experts/NGOs/State Governments containing their suggestions/opposition to the proposed amendments. Based on the suggestions contained in these memoranda and evidence of the representatives of the Department of Consumer Affairs (Nodal Department), Ministry of Law and Justice, various NGOs, experts and State Governments, the Parliamentary Standing Committee (2005-06) submitted its Tenth report to both the Houses of Parliament on 23rd December, 2005 containing its observations/recommendations on both the bills simultaneously. A copy of the report was sent to the Department of Consumer Affairs for Action Taken Replies on the Committee's recommendations.

1.4 The Department of Consumer Affairs set up a committee in January, 2006 to examine the Tenth report of the Parliamentary Committee with Additional Secretary as Chairperson and Principal Secretaries, Department of Food and Civil Supplies of Government of Andhra Pradesh, Gujarat and Punjab as members. The recommendations of the Parliamentary Committee were also circulated to all States/UTs and discussed in the Conference of State Secretaries in-charge of Consumer Affairs held on 28th April, 2006. The Department of Consumer Affairs have stated that the said meeting unanimously approved the draft integrated Bill on Legal Metrology prepared by the Committee.

1.5 Asked as to why only the State Governments of Andhra Pradesh, Gujarat and Punjab were included in the Committee set up to examine the recommendations of the Standing Committee and what were the views of other State Governments/UTs in this regard, the Secretary, Department of Consumer Affairs stated during evidence:-

'The Chairman was the Additional Secretary, Department of Consumer Affairs. The Members were representatives

of the Ministry of Law because this is a legal issue; Principal Secretary, Food and Civil Supplies, Andhra; Principal Secretary, Food and Civil Supplies, Gujarat; Principal Secretary, Food and Civil Supplies, Punjab; Controller, Legal Metrology, National Capital Territory of Delhi; Controller, Legal Metrology, Government of Madhya Pradesh, Bhopal; and Controller, Legal Metrology, Government of Orissa. After this, Committee drafted framework of a Bill, it was discussed in that Committee of the State Governments where Secretaries were there. And they endorsed the Bill.'

1.6 The representatives of Indian Institute of Legal Metrology, Ranchi highlighted the provisions of Legal Metrology Bill, 2008 as under:-

'The previous Act is known as the Standards of Weights and Measures, 1976, and there is also the Enforcement Act, 1985. We can say that in the existing Act, the total number of sections is 85 plus 75 which comes to 160. But in the proposed amendment Bill, the total number of sections is 56. So, while we are going to definitely reduce the number of sections, some provisions are going to be left out in the proposed amendment Bill. For example, I want to highlight about the amendment Bill. Similarly, other sections are not going to be covered in the proposed amendment Bill, 2008. The definitions are given in the proposed amendment Bill about legal metrology are given by scientists. In our comments, we have given the definition of legal metrology. Approximately that definition is considered in this proposed amendment Bill, 2008. I think it is all right as regards the definition of legal metrology.'

1.7 Out of the 24 recommendations made by the Parliamentary Committee, 19 recommendations were accepted by the Department and changes incorporated accordingly in the new Bill. The major recommendation of the Committee for amalgamation of the two Acts into a single legislation has been accepted by the Department. A gist of recommendations of the Parliamentary Committee acceptable to the Department alongwith the response of the Department of Consumer Affairs is given in Appendix I. Recommendations of the Committee not acceptable to the Department of Consumer Affairs alongwith the response of the Department are shown in Appendix II.

1.8 The Legal Metrology Bill, 2008 (Appendix III) was introduced in Rajya Sabha on 24th October, 2008 and referred to the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution by Hon'ble Speaker under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha on 5th November, 2008 for examination and report to the Parliament.

1.9 According to the Department, The Legal Metrology Bill, 2008 is a single integrated legislation on weights and measures. When enacted, it will replace the existing two legislations on weights and measures, namely, "The Standards of Weights and Measures Act, 1976" and "The Standards of Weights and Measures (Enforcement) Act, 1985". The Legal Metrology Bill, 2008, combining the provisions of the existing two Acts, has been largely framed on the recommendations of the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution, as contained in their Tenth Report.

1.10 The Committee have been further informed that The Legal Metrology Bill, 2008 aims to simplify the weights and measures laws. It has only 56 sections in place of 160 sections together in the existing two Acts. The Legal Metrology Bill, 2008 intends to maintain the uniformity in the implementation of weights and measures laws in the country, as the rule making power in respect of enforcement rules on weights and measures laws, which has been with the States hitherto will lie with the Central Government[Clause 52]

1.11 As informed by the Department of Consumer Affairs, the Bill provides for notification of "Government approved test centre" for verification of certain prescribed weighing and measuring instruments [clause 24(2)]. The existing legal provision require verification of weighing and measuring instruments to be done by the State enforcement authorities only. This will enable optimum utilization of the existing testing facilities in non-Governmental sector in the country. The State authorities will continue to regulate weighing and measuring instruments, which they have been doing at present. At the same time

more and more sophisticated newer type weighing and measuring instruments, hitherto not regulated by the enforcement authorities , like electricity meters, pollution control checking instruments, speed measuring instruments etc., can be regulated through these 'Government approved test centre'.

1.12 Further, the Bill proposes to do away with regulation of weights and measures used in industrial production, as it involves no transaction and is only for inhouse use of the industries. The Bill also provides for nomination by a company anyone of its Director to be responsible for implementation of the provisions of the Act and rules. This is similar to existing provision in the Prevention of Food Adulteration Act. At present all Directors of the Company are liable for violation and all of them are required to appear in person before the court/ adjudicating authorities [clause 49].

1.13 The Bill totally does away with regulation of weights and measures and pre-packed commodities, meant for export, as they are to comply with the laws of importing country.

1.14 The Bill provides for prescribing qualification for 'legal metrology officers', namely Controller, Joint, Deputy and Assistant Controller in the State organization for proper implementation of weights and measure laws. The existing Rules provide for scientific and technical qualification only for inspector of weights and measures [clause 14(2)].

1.15 The Bill also provides for :-

- (i) revision of maximum fee prescribed for various services provided under the Act so as to make the rates commensurate with the services; and
- (ii) updating penalties for various offences under the Act.

1.16 The highlights of the Legal Metrology Bill, 2008 as enumerated in the Statement of Objects and Reasons of the Bill are as under:-

- (a) regulation of weight or measure used in transaction or for protection;

- (b) approval of model of weight or measure;
- (c) verification of prescribed weight or measure by Government approved Test Centre;
- (d) prescribing qualification of legal metrology officers appointed by the Central Government or State Government;
- (e) exempting regulation of weight or measure or other goods meant for export;
- (f) levy of fee for various services;
- (g) nomination of a Director by a company who will be responsible for complying with the provisions of the enactment;
- (h) penalty for offences and compounding of offences;
- (i) appeal against decision of various authorities; and
- (j) empowering the Central Government to make rules for enforcing the provisions of the enactment.

1.17 Since the Committee on Food, Consumer Affairs and Public Distribution (2005-06) had dealt with the earlier two Bills, threadbare after wide consultations before presentation of their Report to the Parliament and the present Bill namely, "The Legal Metrology Bill, 2008" is largely based on the recommendations of the Committee, the Committee did not deem it fit to again hear the views of experts/NGOs etc. They, however, shared the views of Chief Secretaries of some of the State Governments viz State Governments of Rajasthan, Gujarat, Maharashtra and Andhra Pradesh about the various provisions of the Bill during their study visit held in January-February, 2009. They also took evidence of the representatives of the Indian Institute of Legal Metrology, Ranchi and the Department of Consumer Affairs on the said Bill.

1.18 The Committee note that 'The Legal Metrology Bill, 2008' as introduced in Rajya Sabha on 24th October, 2008 aims to simplify the weights and measures laws. The Bill seeks to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weights, measures or number or for matters connected therewith or incidental thereto. The Bill has been referred to the Standing Committee on Food, Consumer Affairs and Public Distribution for examination and report by Hon'ble Speaker under Rule 331E of the Rules of Procedures and Conduct of Business in Lok Sabha. The Committee note that the Bill propose to replace the two Acts viz. (i) The Standards of Weights and Measures Act, 1976 and (ii) The Standards of Weights and Measures (Enforcement) Act, 1985. Earlier, way back in 2005, two Bills namely (i) The Standards of Weights and Measures (Amendment) Bill, 2005 and (ii) The Standards of Weights and Measures (Enforcement) Amendment Bill, 2005 were introduced in Rajya Sabha on 10th March, 2005 and referred to the Standing Committee on Food, Consumer Affairs and Public Distribution for examination and report. The Committee examined both the Bills simultaneously and presented a consolidated report on 23rd December, 2005. The Committee find that out of 24 recommendations made by the Committee, 19 recommendations were accepted by the Government and changes incorporated

accordingly in the new Bill. The Committee are concerned to note that some of the important recommendations made by them have not been accepted by the Government which relate to verification of weights and measures instruments by Special Verification Agents, period of re-verification of weights and measures, qualification of enforcement authorities of States and powers to make rules relating to weights and measures. The Committee had made specific recommendations in their earlier report that the concept of Special Verification Agency (SVA) for verification of sophisticated weights and measures instruments may not be introduced. The Committee are disturbed to note that the Government have merely changed the nomenclature of SVA to Government Approved Test Centre (GATC). The Committee will discuss this issue as well as other issues in the relevant chapter of the report.

The Legal Metrology Bill, 2008 has been examined in detail by the Committee. The Committee deliberated each and every provision after detailed discussions/consultations with the Chief Secretaries of State Governments of Rajasthan, Gujarat, Maharashtra and Andhra Pradesh during their study visit to these States, took evidence of Director, IILM, Ranchi as well as the Nodal Department viz. the Department of Consumer Affairs at its various sittings and arrived at conclusions which have been given in the subsequent chapter of the report. The recommendations of the Committee have been given

issue/clause-wise. The clauses which have not been commented upon in the report are found to be in order.

The Committee urge that while bringing amendments as suggested by them, the Department should ensure that all the consequential amendments are appropriately made in the Legal Metrology Bill, 2008 and the revised bill brought forward urgently for efficient regulation of trade and commerce in weights and measures keeping in view the larger interests of the consumer of the country.

CHAPTER II

REPORT

A. DEFINITION OF GOVERNMENT APPROVED TEST CENTRE (GATC)

In the Legal Metrology Bill, 2008 the term Government Approved Test Centre has not been defined anywhere whereas the term Special Verification Agent was defined in Clause 46A of the Standards of Weights and Measures (Amendment) Bill, 2005 which means a person to whom a license is issued whose name is included in the register of Special Verification Agent under Section 46 D.

2.2 The Government of Rajasthan in this regard have suggested that the concept of GATC is an arguable point and if at all a decision is taken to continue with the concept then only it should be defined in detailed way which covers the scope of activity of such centres also. The definition of “Legal Metrology” as defined in the Bill is meaningful only when the concept of introduction of “Government Approved Test Centre” is dropped in view of the phrase “which have the object of ensuring public guarantee from the point of view of security and accuracy of weighments and measurements” appearing in the definition. Ensuring public guarantee is of prime importance to government whereas a private venture of Approved Test Centre is primarily guided by profit and loss considerations.

2.3 The Government of Gujarat suggested that the definition of GATC should include the following (i) ‘The GATC should be an organization/agency which should have latest world class technology with adequate skilled manpower; and (ii) it should have adequately developed laboratory infrastructure with Research and Development facility.

However, the State Government should have a clear role in the identification and approval of proposed GATCs.’

2.4 The Government of Maharashtra have suggested that the definition of GATC should be as follows:-

'The verifying and stamping authority which has been approved by the Central Government or State Government exclusively for the verification and stamping of weights and measures of the commercial standards, which conform to the standards laid down in the Act and the Rules'.

2.5 According to the State government of Andhra Pradesh the meaning of "Govt. Approved Test Centre" should be a Test Centre for verification/calibration of the weights and measures as approved by the State Government.

2.6 Asked whether the same definition of SVA would be applicable in the case of Government Approved Test Centre, the Ministry in a note furnished to the Committee stated that the term Government Approved Test Centre as mentioned in the bill in Clause 24(2) is self explanatory to mean such centres approved by Central/State Government to undertake verification of prescribed weight or measure.

2.7 During evidence the Secretary, Department of consumer Affairs further elucidated the term "Government Approved Test Centre" as under:-

'I would like to add only one thing here in the replies which have been given that these Government approved centers, they have not been defined exclusively because it could happen that they are not necessarily private agencies. This is the first point which I would like to clarify. So, if there is some apprehension in the minds of the State Governments that these will be private agencies, it does not mean that they would only be private agencies.'

2.8 The Committee note that the term Special Verification Agent was defined in Clause 46A of the Standards of Weights and Measures (Amendment) Bill, 2005 which meant a person to whom a license is issued, whose name is included in the register of Special Verification Agent under Section 46 D whereas the term Government Approved Test Centre (GATC) has not been defined anywhere in 'The Legal Metrology Bill, 2008'. The argument of the Ministry that the term GATC as mentioned in the Bill in Clause 24(2) is self-explanatory to mean such centers approved by the Central/State Government to undertake verification of prescribed weight or measure is not acceptable to the Committee. The Committee is also not convinced with the argument of the Secretary, Department of Consumer Affairs that the GATC have not been defined exclusively because it could happen that they are not necessarily private agencies. The Committee are of the opinion that when the word legal metrology had been defined in the previous amendment Bill, the word GATC should also be defined in this bill. The Committee, therefore, feel that probably the Bill tries to give the definition as 'The verifying and stamping authority which has been approved by the Central Government or State Government exclusively for the verification and stamping of weights and measures of the commercial standards, which conform to the standards laid down in the Act and the Rules' should be incorporated in the Legal Metrology Bill, 2008.

(B) APPOINTMENT AND POWERS OF DIRECTOR, CONTROLLER AND LEGAL METROLOGY OFFICERS

2.9 Clause 13 of the Legal Metrology Bill, 2008 provides that the Central Government may, by notification, appoint a Director of Legal metrology, Additional Director, Joint Director, Deputy Director, Assistant Director and other employees for exercising the powers and discharging the duties conferred on them by or under this Act in relation to inter-State trade and Commerce.

(2) The qualifications of the Director and legal metrology officers appointed under sub-section(1) shall be such as may be prescribed.

(3) The Director and every legal metrology officer appointed under sub-section (1) shall exercise such powers and discharge such functions in respect of such local limits as the Central Government may, by notification, specify.

(4) Every legal metrology officer appointed under sub-section (1) shall exercise powers and discharge duties under the general superintendence, direction and control of the Director.

(5) The Director, the Controller and every legal metrology officer authorized to perform any duty by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(6) No suit, prosecution or other legal proceeding shall lie against the Director and legal metrology officer authorized to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

(7) The Central Government may, with the consent of the State Government and subject to such conditions, limitations and restrictions as it may specify in this behalf, delegate such of the powers of the Director under this Act as it may think fit to the Controller of legal metrology in the State and such Controller may, if he is of opinion that it is necessary or expedient in the public interest so to do delegate such of the powers that it is necessary or may think fit to any legal metrology officer and where any such delegation of powers is made by such controller, the person to whom such powers are delegated shall exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by way of delegation.

(8) Where any delegation of powers is made under sub-section (6), the powers so delegated shall be exercised under the general superintendence, direction and guidance of the Director.

2.10 The Indian Institute of Legal Metrology desired that the word "Director" appeared in Sub. Clause (5) and (6) of Clause 13 shall be deleted. Asked as to why the Indian Institute of Legal Metrology want to exclude the Director from the purview of Public Servant within the meaning of Section 21 of the Indian Penal Code, the representative of Indian Institute of Legal Metrology stated during evidence

"Based on the meaning of public servant is already defined in the section 21, sub section 7 of the Indian Penal Code 1860, a person who is bringing an offender to the eyes of a court of law, will come under the definition of a public servant. On the basis of that, Director and Controller should also come under the definition of public servant. This definition is not my definition. It is there in section 21 of the IPC, 1860 . So, that definition is clear. On the basis of that, Director and Controller should come under the purview of public servant."

2.11 When asked whether the above proposal is acceptable to the Government, the Ministry in a note furnished to the Committee stated that the "reasons for deletion of the word `Director' should have been spelt out by IILM, Ranchi. Notwithstanding, since Director is empowered under the existing Act/proposed new Bill to discharge functions imposed by or under the Act, it is necessary to include Director in sub clause 5 and 6 of Clause 13 of the Bill."

2.12 Clause 13 of the Legal Metrology Bill, 2008 deals with appointment and powers of Director, Controller and Legal Metrology Officers. According to Sub Clause 5 of Clause 13, Director, Controller and other Legal Metrology Officers authorized to perform any duty under this Act shall be deemed to be public servant within the meaning of Section 21 of Indian Penal Code. Similarly Sub-Clause 6 provides that no suit, prosecution or other legal proceedings shall lie against the Director and Legal Metrology Officer authorized to perform any duty under this Act. The Committee feel that the provisions made under Sub-Clause 6 have already been covered in Sub-Clause 5 of Clause 13 of the Bill. The Committee recommend that Sub-Clause 6 may be removed from Clause 13 of the Bill.

(C) VERIFICATION AND STAMPING OF WEIGHTS AND MEASURES INSTRUMENTS

2.13 Clause 24 of the Legal Metrology Bill, 2008 provides as under:-

‘(1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.

(2) The Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the Government approved Test Centre.

(3) The Government approved Test Centre shall be notified by the Central Government or the State Government, as the case may be, in such manner, on such terms and conditions and on payment of such fee as may be prescribed.

(4) The Government approved Test Centre shall collect such fee on such terms and conditions for the verification of weights and measures specified under sub-section (2) as may be prescribed.’

2.14 Earlier, in the Standard of Weights and Measures (Amendment) Bill, 2005 a new Chapter was inserted to provide for creation of Special Verification Agents (SVA). It was meant that the SVA will take up periodical verification of sophisticated weighing or measuring instruments like flow metres, energy metres etc. which are at present not verified by State enforcement authorities due to lack of infrastructure, expertise etc Special Verification Agents will augment the facilities already existing with States by making use of testing facilities in the non-Governmental Sector in the country. The Ministry had also proposed consequential changes in the Act vide clause 46-B to 46-G.

2.15 The Committee invited the comments of the States/UTs as well the experts and other interested groups and took their evidence. The

concept of the Special Verification Agents was not acceptable to anyone who furnished their views/comments to the Committee. In their view the amendment would lead to nexus between the traders and SVA and the ultimate sufferer would be the consumer, as it would prevent checking of any Weights & Measures stamped by SVA. Further, SVA would get free hand, which was likely to result in malpractices. The Committee was of the opinion that the responsibility to protect the interest of the consumers was that of the State Governments and the amendment would weaken the State Enforcement machinery which would adversely affect the protection of consumers. The Committee were not convinced with the arguments of the Ministry that they had made this provision as the State Enforcement machinery did not have the adequate infrastructure or other facilities to check the instruments. The Committee, therefore, recommended that the concept of the Special Verification Agents need not be introduced.

2.16 The above mentioned recommendation of the Committee was not accepted by the Government. Instead the nomenclature of Special Verification Agency has been changed to Government Approved Test Centre in the new integrated Bill. The Committee have been apprised that it is only to verify weight or measure as may be prescribed in the rules. The regulation of weight or measure being regulated by the State at present will continue to be regulated by them only. It is in the interest of consumer and has to be retained.

2.17 During briefing on The Legal Metrology Bill, 2008, the Secretary, Department of Consumer Affairs justified the concept of Government Approved Test Centre as follows:-

'In the earlier Amendment Bill, the verification was proposed to be given to third party agency and it was called the special verification agency. That somehow seemed to convey a wrong impression that we are appointing some agents for carrying out the verification and that entirely, it will go to private hands and so the State Government will be made redundant. So, a lot of misinformation was getting around about the

enforcement authority. So we changed the name that it is a Government approved test centre and that the test centre will be approved either by the Central Government or the State Government and what should be their role, it will be put in the rules. The approval is given only for manufacturing firms or utility agencies which provide service, water service, electricity service and it is given to only those agencies. First, it is not given to each and everybody. It is given to only qualified persons and it will be approved by the Government. Once the Government approves these agencies, the Government should also keep a close watch over all these agencies. So, the Government enforcement agencies at the State level should also upgrade their equipment. Therefore, in course of time they have to raise their bar and their expertise.'

2.18 The Committee on its study visit heard the views of the State Governments of Rajasthan, Gujarat, Maharashtra and Andhra Pradesh. The Government of Rajasthan furnished their views as follows:-

'As per Section 24 of the Standards of Weights and Measures (Enforcement) Act, 1985, the verification and stamping of weights and measures were within the powers and jurisdiction of the Controller i.e. the State Government and this proposed section 24(2) takes away part of such powers from the State Government and vest them in the Central Government

The kinds of weights and measures to be verified by the proposed Government Approved Test Centres have not been detailed out. Therefore, it might lead to ambiguity in the powers of the legal metrology enforcement authorities of the State, Central Government and the Government Approved Test Centres.

In the earlier amendment Bills, 2005 disapproved by the Parliamentary Committee, there was provision of Special Verification Agency (SVA). Rajasthan had earlier contended that SVA should not be given power of verification and their role may be limited to the work of the maintenance and repairing only. The verified equipments should bear the seal of the State Government so that the common man is assured of its credibility.'

2.19 Similarly, the Government of Gujarat stated:-

'As understood, the Government approved test centre will operate in newer areas not covered by the present State Enforcement infrastructure, which is welcome. But at the same time, the State Government should also be enabled under clause 52(2)(r) to prescribe any new items to be verified by GATC under Clause 24(2).'

2.20 The Government of Maharashtra were of the opinion that-

'State Government is opposed to the concept of Special Verification Agents. The proposed GATC in the new Bill will be an addition to the existing and established laboratories in the States. This will create duplication and confusion.'

2.2 The Government of Andhra Pradesh in their memorandum furnished to the Committee stated that-

'At present, the Central Government does not have staff to look after these functions. It requires staff for supervision of functioning of Special Verification Agencies. In other words, it is nothing but creation of another agency to over see the functioning of the Special Verification Agencies. It is an additional burden on the exchequer. The concept of Special Verification Agencies has been introduced in the name of adopting international Standards and to absorb technology.'

2.22 When asked whether the verification and stamping of weights and measures by the GATC is justified when a full-fledged Government organization on weights and measures is already functioning in each of the States, the Government of Rajasthan stated as under:-

'No sir, instead of going in for verification and stamping of weights and measures by the Government Approved Test Centres, State Government organization of weights and measures should be further strengthened, appropriately trained and equipped by way of Central Grants and programmes. If done so, the existing legal metrology machinery of the State can deliver in a better and more credible way than any other private agency whose primary motive would be to make his venture economically viable. Government machinery can always be accountable for its action.'

2.23 In this context, the Government of Maharashtra stated as follows:-

'The State Government is of the view that the verification and stamping of weights and measures by another agency, when a dedicated organization has been working since long with distinction, to verify and stamp weights and measures in the State, is not required.'

2.24 The Andhra Pradesh Government stated :-

'The Department is not in favour of handing over the verification and stamping of weights and measures to Government Approved Test Centre. Since the verification and stamping is a statutory requirement, it should be done under the control of Government machinery to maintain the accuracy in protecting the interests of the consumer. Hence, the Government Approved Test Centres are not advisable.'

2.25 The Government of Gujarat stated:-

'This concept of GATC is most useful in newer areas not covered by the present State Enforcement Agency. Moreover, it can also supplement the capacities of State Government wherever the capacity of the State Government is insufficient or inadequate in terms of technology or expertise. In this context, it is also proposed to vest the powers to make rules with the State Government under Clause 52(2)(r) to prescribe any new item to be verified by GATC under Clause 24(2). In other words, Gujarat favours the continued existence of the present Government system in traditional areas and in addition GATCs would function mainly in new emerging areas. The State Government also believes that it would be more practical to have a role also in supervising the operations of such GATCs.'

2.26 In this regard, the representative of the Indian Institute of Legal Metrology, Ranchi stated during evidence:-

'In that case, problem will definitely come. The State Government officials and Government Approved Test Centre Officials, both will not come at the same platform. Definitely some problem will come at that time. The scale of pay is going to be decided by the Government. In that case, at the time of verification of weight and measures, to get some more, some deviation from the original path

may take place from the GATC. This is not possible in the case of enforcement officials while discharging their duties. Discrepancy will come and definitely conflict will arise at that time.'

2.27 When enquired as to why the Government have changed the nomenclature of SVA to GATC when the purpose of both the agencies are same and why the Government is interested in getting the verification of weights and measures by a private agency, Department of Consumer Affairs stated that the term SVA was conveying an impression of appointment of individual agents by the Government in a narrow sense, whereas GATC are notified bodies by the Government. GATC can be either an educational institution/private or public entity.

2.28 Asked whether the Central Government have adequate infrastructure to look after and supervise the functioning of GATC, the Secretary, Department of Consumer Affairs stated :-

'In the coming years, we will ensure that we provide necessary infrastructure to the States so that they upgrade their skills and we will be very careful that the Government approved test centres do not abuse or misuse whatever appeal is given to them and they use the approval in an appropriate way.'

2.29 To a query about the difficulties likely to be faced by the Government if the verification of sophisticated weights and measures is done under the control of Government machinery, the Committee was informed that instead of the Government undertaking all the verification work itself, it is better if the Government gets the verification done under its supervision/control through GATC.

2.30 When pointed out that instead of putting Government Approved Test Centres, the Government should pressurize the State Governments to strengthen their infrastructure. The Secretary stated :-

'Sir, we are not pressurizing the State Governments at all. I am on a completely different issue that is the issue of consumer redressal. It is not the issue for the Committee but that is entirely a State Subject. The

Government cannot do anything in that. There is the State Consumer Redressal District Fora. There is wide variation; nothing we can do about it. But I am only mentioning to you that the States in their own respective territory are sovereign. We have no intention, nor the capacity to encroach upon that territory. It is only an enabling provision for the States. In case some State feels that we would like to do so, they can approve the Centres.'

2.31 The Secretary, Department of Consumer Affairs further explained during evidence as under:-

'On the first point that the GATC should not be given power of verification and mandated to maintenance, today there is a separate maintenance entity – section 19(i) of today's Act and clause 23 of the Bill. So, maintenance is quite a separate thing from checking the accuracy of the weights and measures. These two roles are different. So, the work of GATC is only testing. It is quite possible that they may do repairing also. But these roles are different. I have already accepted that point that we are not going to supervise. It is the State Government which is supervising. So, there is no additional burden.'

2.32 The Committee note that Clause 24 of the Legal Metrology Bill, 2008 provides for verification and stamping of sophisticated newer type of weighing and measuring instruments like electricity meter, pollution control checking instruments, speed measuring instruments etc. by the Government Approved Test Centre (GATC). The Committee further note that earlier in the proposed Standards of Weights and Measures (Amendment) Bill, 2005, a chapter was inserted for verification of sophisticated weights and measures by the Special Verification Agent (SVA). The concept of SVA was not accepted to the State Governments and experts and others who submitted their comments to the Committee, due to various reasons. The Committee had, therefore, disapproved the concept of SVA and recommended that all the clauses related to the SVA in the Bill should be deleted. The Committee are perturbed to note that the said recommendation of the Committee was not acceptable to the Government. Instead the Government have changed the nomenclature of SVA to GATC which in the opinion of the Committee is nothing but old wine in new bottle. During detailed examination of the Legal Metrology Bill, 2008, the Committee heard the views of some of the State Governments viz. Rajasthan, Gujarat, Maharashtra and Andhra Pradesh on the issue of verification and stamping of weights and measures by GATC. According to these State Governments, the verification and stamping of weights and measures by GATC is not justified in view of the fact that a full-fledged Government organization on

weights and measures is already functioning in each of the States. The Indian Institute of Legal Metrology (IILM), Ranchi, one of the premier institutions on weights and measures is also of the view that discrepancy will come and conflict will arise between GATC and enforcement officials while discharging their duties. The Committee are not convinced with the arguments put forth by the Department of Consumer Affairs that the term 'SVA' was conveying an impression of appointment of individual agents by the Government in a narrow sense whereas the GATC are notified bodies by the Government. In the opinion of the Committee, the verification and stamping is a statutory requirement and it should be done under the control of Government agency to maintain the accuracy for protecting the interest of the consumers. The Ministry have also admitted that at present they do not have adequate infrastructure to look after and supervise the functioning of GATC. The Committee feel that instead of going in for verification and stamping of weights and measures by GATC, the State Government organizations of weights and measures should be further strengthened, appropriately trained and equipped by way of central grant and programmes. The Committee, therefore, recommend that the concept of 'Government Approved Test Centre' should be done away with from Clause 24 and the 'State Governments' should be authorized to perform the duties of verification and stamping of weights and measures instruments.

(D) POWER TO MAKE RULES (CLAUSE 52)

2.33 Section 72(1) of the Standards of Weights and Measures (Enforcement) Act, 1985 provided that the State Government may, by notification and after consultation with the Central Government, make rules to carry out the provisions of the rules.

2.34 It had been further clarified in sub-section (5) of Section 72 of the Act, 1985 that every rule made under this Section shall, as soon as may be, after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

2.35 The Government vide Clause 40 of the proposed Standards of Weights and Measures (Enforcement) Amendment Bill, 2005 had proposed that in section 72 of the principal Act,-

(a) in sub-section (1) for the words “The State Government may, by notification and after consultation with the Central Government the words, “The Central Government” be added.

2.36 The Government had also proposed to amend sub-section (5) as follows:-

(5) ‘Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modification form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule or annulment shall be.’

2.37 The Committee had examined the above amendment and taken the views of various States/UTs and other experts. The Committee was unable to accept the arguments put forth by the Ministry that the enforcement activities in the States are guided by the enforcement rules and non-uniformity in enforcement law creates havoc, confusion, lack of transparency and leading to high-handedness. The Committee therefore, recommended that the rule making powers should remain with the State Governments and the proposed amendment may be deleted.

2.38 The said recommendation of the Committee was not accepted by the Government on the ground that if the rule making power is given to the States, it will defeat the very purpose of amendment to Constitution. The rule making power should be vested with a single authority for ensuring uniformity.

2.39 The Government have repeated the same provision in Clause 52 of The Legal Metrology Bill, 2008 as under:-

‘52(1) The Central Government may by notification, make rules for carrying out the provisions of this Act.’

2.40 The Committee on its on-the-spot study visit heard the views of the State Government of Rajasthan, Gujarat, Maharashtra and Andhra Pradesh. The comments/suggestions put forth by the Government of Rajasthan are as under:-

‘Clause 52(i) can be reworded in the following manner:
‘The State Government may and after the consultation with the Central Government, make rules to carry out the provisions of the Bill.’

This will ensure uniformity as well as provide States an opportunity to take into consideration the conditions prevailing in the particular state.’

2.41 The Gujarat Government stated as under:-

'The State Government should be empowered to make the Rules for ensuring the proper implementation of the proposed legislation. The Central Government should prepare and circulate model rules to the States, to maintain some uniformity, who may then add to/adapt/alter the rules as per local requirements and this can be in consultation with the Central Government.(This suggestion is in line with existing section 72(1) of The Standards of Weights and Measures (Enf.) Act, 1985 and hence should be acceptable).'

2.42 The Andhra Pradesh Government was of the following view:-

'Rule making powers may be left with the State Government, as the local conditions vary from the State to State.'

2.43 The Government of Maharashtra in this context stated :-

'The Central Government should formulate Model Rules, within the framework of which State Governments should have freedom to formulate their own rules which will help in meeting the State-specific requirements. However, if a State Government needs to frame rules beyond the scope of Model Rules, prior consultation and approval of the Central Government may be required.'

2.44 When asked as to why the Central Government want that the rule making powers should remain with Central Government, the Department of Consumer Affairs in a note furnished to the Committee stated that for the whole country to look like a single market, one single rule by Centre is ideal. Even under the existing provision of the Act, the States have to get the approval of Central Government., to amend the Rules. But once the approval is accorded by Centre for such an amendment and circulated to all States and UTs, the States have the power to delay the amendment. This defeats the purpose of uniformity. The local requirement can always be accommodated by the Central Government in the Rules.

2.45 During evidence, the Secretary, Department of Consumer Affairs further explained:-

'Once we say that this change is to be made, then, it needs to be made across the country. The only problem there is when the change will be made by the respective State Government is not clear. Therefore, some States may take six months; some States may take two years. Some States have even taken 10 years. So, to remove that, the idea was to have uniformity. Why is uniformity required? It is because that any manufacturer would need to give his or her measuring instrument across the country. So, that person should know what is the framework across the country.'

2.46 The Committee note that Clause 52 of the Legal Metrology Bill, 2008 provides that the Central Government may by notification make rules for carrying out the provisions of the Act. The Committee regret to note that the recommendation of the Standing Committee (2005-06) contained in para 3.62 of their Tenth Report that the power to make rules should remain in the hands of State Government is not accepted by the Government on the grounds that it will defeat the very purpose of amendment to Constitution. The Committee fail to understand as to why the Central Government wants that the rule making power should remain with them when none of the State Governments are in favour of this proposal. The Committee do not agree with the plea of the Government that for the whole country to look like a single market, one single rule by Centre is ideal. The Committee are of the opinion that the local condition may differ from State to State and it may not be possible to bring uniformity in all States/UTs. The Committee feel that the Central Government should prepare and circulate 'Model Rules' to the States who may alter/add the rules as per their local requirements in consultation with the Central Government. The Committee, therefore, reiterate their earlier recommendation and desire that the rule making powers should remain with the State Governments and the amendment proposed in Clause 52 of the Bill be revised accordingly.

(E) OFFENCES BY THE COMPANIES (CLAUSE 49)

2.47 Section 62 of the Standards of Weights and Measures (Enforcement) Act, 1985 deals with the Offences by the Company as under:-

1. If the person committing an offence under this Act is a company, every person who, at the time the offence was committed; was in charge of, and was responsible to, the Company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commissions of such offence.

2. Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section:-

- a) "company" means any body corporate and includes a firm or other association of individuals; and
- b) "director", in relation to a firm, means a partner in the firm.

2.48 The Government have proposed to amend section 62 of the Enforcement Act, 1985 vide Clause 49 of the Legal Metrology Bill, 2008 as under:-

'(a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as a person responsible); or (ii) where no person has been nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and (b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against

and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.'

2.49 Any company may, by order in writing, authorize any of its directors to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Director or the concerned Controller or any legal metrology officer authorized in this behalf by such Controller (hereinafter in this section referred to as the authorized officer) in such form and in such manner as may be prescribed, that it has nominated such director as the person responsible, along with the written consent of such director for being so nominated.

Explanation - Where a company has different establishment or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

2.50 The Committee wanted to know that in case a company is found violating the provisions of legal metrology, who should be held responsible, whether the company or some particular person, the State Government of Rajasthan stated as follows:-

'In case a company is found violating the provisions of legal metrology and the company had nominated a person responsible to the company for the conduct of business, then both the nominated person and the company should be held responsible. In the case of second or subsequent offence by this company, again both the nominated person (even if there is a new nominee) and the company should be responsible'.

2.51 The Government of Gujarat replied as under:-

'The nominated person should be held responsible as the executor for the offence but simultaneously equal liability should be kept on the company also.'

2.52 The Maharashtra Government stated as under:-

'The State is of the opinion that in the case of a company violating the provisions of Legal Metrology, the Board of Directors should be held responsible for violations. This is in the line of provision of existing Act and Rules which has been used effectively in the State.'

2.53 The Andhra Pradesh Government stated as follows:-

'Entire management of the company should be held for violation of the provisions of Legal Metrology. This will act as a deterrence.'

2.54 When asked whether the Government have consulted all the stockholders before making provisions regarding offences by the company in the Legal Metrology Bill, 2008, Department of Consumer Affairs stated that all major trade and industry associations including FICCI, ASSOCHAM and CII, are part of expert committee and subsequent committee constituted by the Department, to recommend amendment proposal to the Acts right from 1998 have been consulted. Even under PFA Act, where the violation is much more serious than weights and measures, either one of the Directors or manager is only made responsible.

2.55 During evidence, the Committee wanted to know whether the suggestions made by the Government of Maharashtra is acceptable to the Government, the Secretary stated:-

'I do not frankly feel, as has been suggested by the Government of Maharashtra, that the entire company or the Directors should be held liable. The company can sue or it can be sued. In fact, Directors so nominated are more than adequate. There may be a case only to make a Manager liable. This is as far as offence by the companies is concerned.'

2.56 The Committee note that Clause 49 of the Legal Metrology Bill, 2008 provides that 'in case of an offence under the Act by a company (a) (i) in case of a person who has been nominated by the company as incharge and responsible to the company for the conduct of business of the company and authorized for this by the company by order in writing, he would be a person, or (ii) in case no such nomination has been made, every person who at the time, the offence was committed was incharge or was responsible, and (b) the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against'. This amendment to the parent Act is not acceptable to any of the State Governments. The Committee are also not convinced with the argument put forth by the Secretary, Department of Consumer Affairs that the 'entire company or Directors should not be held liable'. The Committee feel that there may be chances of misuse of provisions by the companies because in cases of second or subsequent offences, the company may change the nominated person by nominating a new person and thus avoid penalty of imprisonment. The Committee desire that for the words 'a person' as appeared in Clause 49 (1)(a) in the Bill, the words 'Board of Directors' nominated by the company should be inserted.

(F) COGNIZANCE OF OFFENCE

2.57 Under Section 72 of the Standards of Weights and Measures Act, 1976 and Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985, provisions for cognizance of offence had been clearly laid down.

2.58 Section 72 of the Standards of Weights and Measures Act, 1976 states that notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974)-

- *[(a) no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by-
 - (i) the Director;
 - (ii) any other authorized officer;
 - (iii) any person aggrieved; or
 - (iv) a recognized consumer association whether the person aggrieved is a member of such association or not.

Explanation- For the purposes of this clause “recognized consumer association” means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;]

- (b) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;
- (c) an offence punishable under Section 50, Section 52, Section 53, Section 56, Section 58, Section 60, Section 61, Section 63, Section 64, Section 65, or Section 66 may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is summarily tried under this section.

2.59 Similarly, Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973-

- [(a) no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by-
 - (i) the Controller;

- (ii) any other officer authorized in this behalf by the Controller by general or special order;
- (iii) any person aggrieved; or
- (iv) a recognized consumer association whether the person aggrieved is a member of such association or not.

Explanation- for the purposes of this clause 'recognized consumer association' means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;]

- (b) no court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class shall try any offence punishable under this Act.

2.60 The Government of Rajasthan have suggested that in the new Bill, there is no such mention of the procedures of the/cognizance of offence. The level of the presiding officer of the judicial courts which shall try the offence punishable under the Act, needs to be provided in the Bill.

2.61 Asked whether the Government agree with the aforesaid suggestion of the Rajasthan Government, the Department of Consumer Affairs stated that at the time of vetting the Bill, it was felt by Ministry of Law that since the existing provisions of the Act empowers every affected person to file case in a court of law, there is no necessity to mention individual complainants as such. Secondly it was also felt necessary not to restrict filing of case only in Chief Metropolitan Magistrate or Judicial Magistrate of first Class only. It should be widened so that one can file case even before a court of Sub Judicial Magistrate also, depending upon its competence.

2.62 In this regard, the Secretary, Department of Consumer Affairs further supplemented during evidence:-

'It is true that under the existing Act, we had mentioned that these people take cognizance of offences. Under Section 63, the Controller can go to the court, any other officer appointed can go to the court, the consumer association can go to the court, but no court except the one headed by a Metropolitan Magistrate can try the case. When we tried to club and make

the changes, the Law Ministry said that it is not desirable because if you say that any person can go to the court, obviously there is no need to have a particular person designated who alone can go to the court. Why it was put there, it is a different issue. In the modern type of jurisprudence such a thing is not there and which court will take cognizance also need not be mentioned. Recently, in the Gram Nyayalaya Bill also, it is there. Even there, there was no specific mention of any court which will take cognizance. As per the advice of the Law Ministry, we have removed it though it was there in the earlier Act.'

2.63 The Committee are concerned to note that there is no mention in the Legal Metrology Bill, 2008 about the procedures of the cognizance of offences whereas under Section 72 of the Standards of Weights and Measures Act, 1976 and Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985, a provision for cognizance of offence was clearly laid down. The Committee are not inclined to accept the argument of the Secretary, Department of Consumer Affairs that in the modern type of jurisprudence, such a thing is not there and which court will take cognizance also need not be mentioned. The Committee recommend that a clause in the Bill may be clearly laid down on the line of Section 72 of the Standards of Weights and Measures Act, 1976 and Section 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 may be clearly laid down.

**NEW DELHI
19 February, 2009
Magha, 1930(Saka)**

**DEVENDER PRASAD YADAV
Chairman
Standing Committee on Food,
Consumer Affairs and Public Distribution**

ANNEXURE I

Recommendations of the Standing Committee on Food, Consumer Affairs and Public Distribution as contained in the Tenth report **Acceptable** to the Department of Consumer Affairs along with the response of the Department thereof.

Para No.	Gist of observation/ recommendation	Response of the Department of Consumer Affairs
1.9	<p>Over riding provision not maintained throughout the Acts</p> <p>i) The definition of “commodities in packaged form” should have been omitted and definition of “pre-pack commodities” should have been inserted.</p> <p>ii) To maintain overriding provision of the W&M Act.</p> <p>iii) Jurisdiction of IPC dealing with Weights & Measures have been ousted but jurisdiction of Code of Criminal Procedure has not been ousted.</p>	<p>Necessary changes have been done to maintain overriding provision of the Act.</p> <p>i) The definition of “commodities in packaged form” deleted and in its place the definition of “pre-packaged commodities” substituted.</p> <p>ii) The phrase “Except where such offence is not punishable under any other law relating to Weights & Measures for the time being in force” has been removed to maintain the overriding provision of the Act.</p> <p>iii) The provision of Code of Criminal Procedure dealing with Weights & Measures has been ousted.</p>
1.10	<p>Following discrepancies have been noticed:</p> <p>i) The phrase “if in custody</p>	<p>i)The phrase has been omitted. The suggestion is agreed to and needful done.</p>

	<p>shall be discharge forthwith” has not been omitted.</p> <p>ii) Sub-section (3), (4) and (5) under Section 74 of the Standards of W&M Act, 1976 could have been inserted in Section 62 of the Standards of W&M (Enforcement) Act, 1985 also.</p> <p>iii) The power of search of persons has not been conferred.</p> <p>iv) Director (LM) and his subordinates has not been empowered to summon the registers and records has not been provided.</p>	<p>ii)The phrase has been omitted. The suggestion is agreed to and needful done.</p> <p>iii) The powers of search of persons has been conferred. Needful done to provide powers of search of persons to the enforcement authorities.</p> <p>iv) Needful done to empower Director (LM) and his subordinates to summon the registers and records has not been provided.</p>
1.11	<p>Discrepancies have been noticed in the mode of trial for the parallel offences as well as classification of offences as compoundable and non-compoundable.</p>	<p>The discrepancies have been removed in the new integrated Bill on the subject.</p>
1.12 & 1.13	<p>Over lapping of the similar offences in the same act with different punishments. In some cases penalty has been prescribed in some section and in other cases penalty has been prescribed in different sections.</p>	<p>The discrepancies have been removed in the new integrated Bill on the subject.</p>

1.14	Discrepancies noticed in the powers of officers of Legal Metrology to compound an offence.	The discrepancies have been removed in the new integrated Bill on the subject.
1.15	Non-compoundable offences are sent for trial to the courts and there is no question of offenders of non-compoundable offences coming to the Controller or the State Government in appeal. The Section under which these compoundable offences and the penalty thereto needs to be modified.	The discrepancies have been removed in the new integrated Bill on the subject.
1.16	Large number of amendments in these Bills is nothing short of revision of these two Acts. The amendment proposed are highly confusing and at times some of them contradict each other.	Discrepancies noted by the Committee have been removed in the integrated new Bill.
1.17	The Government should amalgamate both the Acts in the single piece of legislation.	A single piece of legislation has been prepared in the place of the existing two legislations
1.18	The Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985 are basically regulatory	The discrepancies have been removed in the new integrated Bill on the subject.

	<p>in nature and therefore neither the officers of Legal Metrology nor those of the State Governments have been conferred the powers of arrest under these Acts. Accordingly the phrase and the offender, if in custody shall be discharged forthwith give rise to doubts about the existence of powers of arrest the said phrase should be deleted.</p>	
1.19	<p>Overriding not maintained throughout the Acts.</p>	<p>The discrepancies have been removed in the new integrated Bill on the subject.</p>
1.20	<p>There is anomaly in the matter of preferring an appeal by the accused persists even after the proposed amendments. While amalgamating these Acts into a single piece of legislation, the anomalies, the discrepancies and deficiencies be rectified.</p>	<p>The discrepancies have been removed in the new integrated Bill on the subject.</p>
1.21	<p>The arrangements of various clauses and the language used in both the Acts are too complex and is not easily understandable. The</p>	<p>As desired by the Committee, the language of the integrated new Bill has been made as simple as possible.</p>

	<p>Committee desired that while recasting the Acts, the Government should attempt to make the language of the Acts as simple as possible.</p>	
2.29	<p>Deletion of Section 23 of the Standards of Weights and Measures Act, 1976 permitting use of non-metric units along with metric units would take our country 50 years back. Government should not delete the Section.</p>	<p>As decided by the Committee, the provision of Section 23 is retained in the new Bill.</p>
2.38	<p>The Committee do not approve the proposal of the Government to do away with publication of certificate of approval of model in the official Gazette and recommend that the practice may continue.</p>	<p>The relevant Section is retained in the new Bill providing for publication of certificate of approval of model in the official Gazette.</p>

ANNEXURE II

Recommendations of the Standing Committee on Food, Consumer Affairs and Public Distribution as contained in the Tenth report **Not Acceptable** to the Department of Consumer Affairs along with the response of the Department thereof.

Para No.	Gist of observation/recommendation	Response of the Deptt. of Consumer Affairs
2.7	The “explanation” may be added to the definition of manufacturer should cover the individuals or firms or HUF who do not claim the end product but sell the end product.	The definition of manufacturer in respect of “pre-packed commodity” is not provided in the new Bill but will be provided in the rules made thereunder and will take care to cover person who do not manufacture the commodity but who prints his name as manufacturer.
2.19	The Government have proposed that ‘period of re-verification’ of the weights and measures would be prescribed by the Central Government. The Committee recommends that Central Government should not encroach upon the rule making power of State Government.	Leaving the rule making power to the States may defeat the very purpose of constitution amendment relating to weights & measures. It is felt that rule making power should be vested with the single authority. However, in the process of making rule vide consultation will be held in the States.

<p>2.54, 2.55, 3.39, 3.40 & 3.52</p>	<p>The concept of Special Verification Agency for verification of Weights and Measures Instrument need not be introduced at all. Instead the Union Government should upgrade and strengthen the existing facilities available with the State Governments.</p>	<p>Nomenclature of Special Verification Agency has been changed to Government approved test centre in the new integrated Bill. It is only to verify weight or measure as may be prescribed in the rules. The regulation of weight or measure being regulated by the State at present will continue to be regulated by them only. It is in the interest of consumer and has to be retained.</p>
<p>3.23</p>	<p>i) The Central Government propose to prescribe the qualification for the enforcement authorities of States. ii) The orders of Director shall be binding on the controllers of the States Legal Metrology Department . The Committee recommend that the proposal of the above amendments be dropped.</p>	<p>i) Qualification of enforcement officials is a basic requirement for proper enforcement of the law relating to Legal Metrology. ii) Instead of Director (LM) the Central Government shall issue directions to the State Controllers.</p>
<p>3.62</p>	<p>The rule making powers should remain with the State Government .</p>	<p>If the Rule making power is given to States, it will defeat the very purpose of amendment to the constitution .The rule making power should be vested with single authority for ensuring uniformity</p>

**MINUTES OF THE TENTH SITTING OF THE STANDING
COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC
DISTRIBUTION HELD ON THURSDAY, THE 27TH NOVEMBER, 2008**

The Committee sat from 1500 hrs. to 1600 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
LOK SABHA**

2. Shri Alakesh Das
3. Shri G.V. Harsha Kumar
4. Shri Abdul Mannan Hossain
5. Shri Parsuram Majhi
6. Shri Harikewal Prasad
7. Shri Fransisco Cosme Sardinha
8. Shri Daroga Prasad Saroj

RAJYA SABHA

9. Smt. Mohsina Kidwai
10. Shri Mangala Kisan
11. Shri Rajniti Prasad

SECRETARIAT

1. Smt. Veena Sharma - Director
2. Shri B.S. Dahiya - Deputy Secretary -I
3. Shri Jagdish Prasad - Deputy Secretary – II

**REPRESENTATIVES OF MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PUBLIC DISTRIBUTION (DEPARTMENT OF
CONSUMER AFFAIRS)**

1. Shri Yashwant Bhave, Secretary
2. Shri Rakesh Kacker, Additional Secretary
3. Shri R. Mathurbootham, Director (Legal Metrology)

At the outset, Hon'ble Chairman welcomed the representatives of Department of Consumer Affairs to the sitting of the Committee

convened to have briefing on 'The Legal Metrology Bill, 2008' which has been referred by Hon'ble Speaker to the Committee for examination and report within three months. Thereafter, the Secretary, Department of Consumer Affairs gave an overview of the historical evaluation of the Bill alongwith the aims and objectives of the proposed Bill. He stated that as recommended by the Committee in their Tenth Report which was presented to Parliament on 23 December, 2005, the earlier two bills namely, (i) 'The Standards of Weights and Measures Amendment Bill, 2005' and (ii) 'The Standards of Weights and Measures (Enforcement) Amendment Bill, 2005' have been withdrawn and merged into a single bill namely 'The Legal Metrology Bill, 2008'. He added that most of the recommendations contained in the Tenth Report of the Committee have been accepted and incorporated in the proposed Bill. An interaction session, then took place.

The following important points emerged during the interaction period: -

- (i) Rationale behind changing the nomenclature of 'The Standards of Weights and Measures Act, 1976 and The Standards of Weights and Measures Enforcement Act, 1985' to 'The Legal Metrology Bill, 2008';
- (ii) The fate of the earlier two Bills i.e. (i) The Standards of Weights and Measures (Amendment) Bill, 2005 and (ii) The Standards of Weights and Measures (Enforcement) Amendment Bill, 2005;
- (iii) Reasons for only three States been given representation on the Committee set up by the Department to examine the Tenth Report of the Parliamentary Standing Committee;

- (iv) Consultations with the other States before finalizing the proposed Bill;
- (v) Need to simplify the laws relating to the weights and measures so that the common man can understand the provisions of the bill.
- (vi) The inclusion of the recommendations of the Committee contained in 10th Report which have been accepted by the Government in the new bill;
- (vii) Reasons for not accepting the rest of the recommendations of the Committee;
- (viii) Difference between the “Special Verification Agent” proposed in the earlier Bills to verify the Weights and Measure and “Government Approved Test Centre” which has been proposed in the new integrated bill;
- (ix) Need for pursuing the State Governments to strengthen their infrastructure instead of putting Government approved test Centre;
- (x) Role of the State Governments vis-à-vis Government approved Test Centres;
- (xi) Justification for having the rule making powers with the Central Government;
- (xii) Difficulties likely to be faced by the enforcement agency in the implementations and penal provisions made in the proposed Bill;

The representatives of the Department of Consumer Affairs replied to the queries raised by the Members.

The Chairman then thanked the witnesses for appearing before them and sharing their free and frank views with the Committee.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

MINUTES OF THE FIFTEENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON FRIDAY, THE 13TH FEBRUARY, 2008

The Committee sat from 1500 hrs. to 1600 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

MEMBERS
LOK SABHA

2. Shri Alakesh Das
3. Smt. (Adv.) P. Satheedevi
4. Shri Fransisco Cosme Sardinha

RAJYA SABHA

5. Shri Shantaram Laxman Naik
6. Shri Kanjibhai Patel
7. Shri Matilal Sarkar
8. Shri Rajniti Prasad
9. Shri Ram Narayan Sahu

SECRETARIAT

1. Smt. Veena Sharma - Director
2. Shri B.S. Dahiya - Deputy Secretary -I
3. Shri Jagdish Prasad - Deputy Secretary – II

Representatives of Indian Institute of Legal Metrology, Ranchi.

1. Shri N.C. Biswas, Director
2. Shri Rajeshwar Kumar, Professor

2. At the outset, Hon'ble Chairman welcomed the representatives of Indian Institute of Legal Metrology (IILM), Ranchi to the sitting of the Committee convened to take evidence on 'The Legal Metrology Bill,

2008'. Thereafter, the representatives of IILM, Ranchi expressed their overall views on the aforesaid Bill.

3. The following important points emerged during the interaction: -
- (i) By merging the two Acts, the total number of sections have been reduced to 56, so some provisions have been left out;
 - (ii) Government Approved Test Centres (GATC) should have been defined in the definition clause of the Bill;
 - (iii) Director, Indian Institute of Legal Metrology, Ranchi and Director Legal Metrology should not come under the purview of public servant;
 - (iv) The management and control of the Institute (IILM, Ranchi) teaching staff and other employees, the course and curricula for training should vest in the Central Government;
 - (v) For proper implementation of the provisions of the legal metrology, training infrastructure should be developed and for proper effective enforcement it should be decentralised.
 - (vi) The ability of IILM, Ranchi to prevent fraudulent use of weight s and measures; and
 - (vii) Power of Union Government to make rules for the whole country to maintain uniformity.

The representatives of the IILM, Ranchi replied to other queries raised by the Members.

The Chairman then thanked the witnesses for appearing before them and sharing their free and frank views with the Committee.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

MINUTES OF THE SIXTEENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON TUESDAY, THE 17TH FEBRUARY, 2008

The Committee sat from 1500 hrs. to 1540 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
LOK SABHA**

2. Shri Avihash Rai Khanna
3. Shri Harikewal Prasad

RAJYA SABHA

4. Shri Shantaram Laxman Naik
5. Shri Kanjibhai Patel
6. Shri Mangala Kisan
7. Shri Rajniti Prasad
8. Shri Matilal Sarkar
9. Shri Ram Narayan Sahu

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri B.S. Dahiya - Deputy Secretary -I
4. Shri Jagdish Prasad - Deputy Secretary – II

Representatives of Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs)

1. Shri Yashwant Bhave, Secretary (Department of Consumer Affairs)
2. Shri R. Mathurbootham, Director, Legal Metrology

2. At the outset, Hon'ble Chairman welcomed the representatives of Department of Consumer Affairs to the sitting of the Committee and drew their attention to the Direction 55(1) of the Directions of the Speaker. Thereafter, the Committee took evidence of the

representatives of Department of Consumer Affairs on 'The Legal Metrology Bill, 2008'. The Secretary, Department of Consumer Affairs expressed overall views of the Government on the Bill.

3. The following important points emerged during the interaction:
 - (i) Need to define Government Approved Test Centres (GATCs) in the Bill;
 - (ii) Need to put the verification and stamping of all sophisticated weights and measures under the control and supervision of the State Governments;
 - (iii) Need to have Rule making powers with the State Governments and the Central Government to frame Model Rules and circulate to the States;
 - (iv) Need to fix accountability of the Board of Directors in case of an offence committed by the company; and
 - (v) Need to insert a clause regarding cognizance of the offence in the Bill.

The representatives of the Department of Consumer Affairs replied to the queries raised by the Members.

The Chairman then thanked the witnesses for appearing before them and sharing their free and frank views with the Committee.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

**MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE
ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION
HELD ON THURSDAY THE 19TH FEBRUARY, 2009.**

**The Committee sat from 1500 hrs. to 1530 hrs. in Committee
Room No. 139, Parliament House Annexe, New Delhi**

PRESENT

Shri Devendra Prasad Yadav - Chairman

LOK SABHA

2. Shri Avinash Rai Khanna
3. Shri Alakesh Das
4. Shri Fransisco Cosme sardinha
5. Smt. (Adv.) P. Satheedevi

RAJYA SABHA

6. Shri Matilal Sarkar
7. Shri Shantaram Laxman Naik
8. Shri Rajniti Prasad
9. Shri Mangala Kisan

SECRETARIAT

1. Shri A. K. Singh - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri B. S. Dahiya - Deputy Secretary-I
4. Shri Jagdish Prasad - Deputy Secretary-II

At the outset Hon'ble Chairman welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the draft report on 'The Legal Metrology Bill, 2008' of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and adopted the same with minor amendment.

2. The Committee authorized the Chairman to finalise the aforesaid report and present the same to both the Houses of Parliament in the current Session of Parliament.

The Committee then adjourned.