

Chapter - 9

THE STANDARDS OF WEIGHTS AND MEASURES (ENFORCEMENT) ACT, 1985

The Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred as the "Act") supplements the Standards of Weights and Measures Act, 1976 (hereinafter referred as the "Standards Act"). It was passed by the Parliament to ensure country wide uniformity in the enforcement procedures of the modern system of weights and measures and also in the scope and coverage of legal control on weights and measures and weighing and measuring instruments. The uniformity of procedures can help to protect consumers in a better way. Since varied standards of weights and measures leave much scope for exploitation by the unscrupulous users, the uniformity of standards has been prescribed to leave no scope for such exploitation. The Act authorises the state governments to appoint controllers of legal metrology for the states and a required number of additional, joint, deputy or assistant controllers, inspectors and other officers to carry out the objectives of the Act efficiently.¹

The controller can authorise any officer, not below the rank of an inspector, to regulate any weight or measure in any area within the local limits of his jurisdiction.² The controller and other officers to perform any duty under this Act are deemed to be a public servant within the meaning of section 21 IPC.³ However, the Act grants them protection of action taken in good faith in exercise of any power or performance of any duty under this Act or the Standards Act.

I. Prohibition in Relation to Use of Weights and Measures

Section 9 of the Act prohibits the use of any weight or measure, other than the standard weight or measure, for any weightment or measurement. It also prohibits the keeping of any such weight or measure in any premises as to indicate that it is intended or is likely to be made use of.⁴ Any weight, measure or number other than the standard weight, measure or number cannot be used in, or form the basis of any contract or other agreement in

1. The Standard of Weights and Measures (Enforcement) Act, 1985, Sec. 5(1),

2. *Id.*, sec. 6.

3. *Id.*, sec. 7.

4. *Id.*, sec. 9(1).

relation to any trade, commerce, production or protection.⁵ Any contravention of this prohibition invalidates the transaction.⁶

Under section 10 of the Act, the state governments have been empowered to direct any transaction, dealing or contract in respect of specified classes of goods services or undertakings or users be made or had in accordance with the weights, measures or number as may be specified for that purpose. Accordingly, certain weights, measures or number may be specified for undertaking industrial production.⁷ Such a direction can be effective for the specified period of time and subject to specified conditions.⁸ In relation to any goods or things, which are sold, transferred, distributed or delivered, or any service rendered, only the standard weights and measures should be used:⁹

- (a) to quote or make announcement of, whether by word of mouth or otherwise, any price or charge, or
- (b) to issue or exhibit any price list, invoice, cash memo or other document, or
- (c) to mention any weight or measure in any advertisement poster or other document, or
- (d) to indicate the weight, measure or number of the net contents of any package on the package itself or on any label carton or other thing, or
- (e) to express, in relation to any transaction, industrial production or protection, any quantity or dimension.

However, this prohibition would not apply in the situations in which such an act is allowed by the Standards Act in accordance with the weights and measures other than the standard weights and measures.¹⁰

The Act reiterates the position taken by the Standards Act and provides that every *reference standard* should be kept at a place and in custody prescribed for the purpose. It can be deemed to be a *reference standard* or used as a *reference standard* only after it has been verified, authenticated and maintained in accordance with the rules made under the Standards Act.¹¹ The state governments have been authorised to get prepared as many sets of secondary standards or working standards as may be necessary at the metrological wing of the mint at Bombay. If the mint expresses its inability

5. *Id.*, sec. 9(2).

6. *Id.*, sec. 9(3).

7. *Id.*, sec. 10(1).

8. *Id.*, sec. 10(2).

9. *Id.*, sec. 11(1).

10. *Id.*, sec. 11(2).

11. *Id.*, sec. 12.

to prepare the same, the government concerned may cause such standards to be prepared by any organization specified by the central government for that purpose.¹² As regards the verification, stamping and custody of secondary or working standards, every *secondary standard* or *working standard* should conform to the standards established by or under the Standards Act. The verification of a *reference standard* should be made at one of the places where *reference standards* are maintained and that of a *working standard*, at one of the places where *secondary standards* are maintained, in each case against the appropriate standards. On such verification the conforming standards should be stamped and a certificate is to be separately issued showing the date on which such weight or measure was stamped. The verification and stamping should be made by the person as has been authorised in this behalf by the Standards Act.¹³

A *secondary standard* or *working standard* cannot be deemed to be so without verification and stamp and cannot be used for the verification of any *working standard* or, for the verification of any weight or measure. Every verified *secondary standard* and every verified *working standard* has to be kept at a place and in custody as prescribed.¹⁴

Where by reason of the size or nature of any *secondary standard* or *working standard*, it is not desirable or practicable to put a stamp thereon, a certificate may be issued to the effect that such secondary standard or working standard conforms to the established standards. The certificate should be in the prescribed form containing such details as would enable its clear identification.¹⁵

II. Registration of Users of Weights and Measures

Any person who is not an itinerant vendor, should get himself registered before using any weight or measure in any transaction or for industrial production or for protection.¹⁶ Every such person is supposed to make an application for the inclusion of his name in a register referred to as the "Register of Users".¹⁷ On receipt of the application, the controller or the person authorised by him has to include the name of such person in that register and issue him a certificate to that effect.¹⁸ Whoever uses any weight or measure without having been registered can be punished with fine which may extend to five hundred rupees, and for the second or subsequent

12. *Id.*, sec. 13.

13. *Id.*, sec. 14.

14. *Ibid.*

15. *Id.*, sec. 15.

16. *Id.*, sec. 16.

17. *Id.*, sec. 17(1).

18. *Id.*, sec. 17(4).

offence, with imprisonment for a term which may extend to six months, or with fine, or with both.¹⁹ Any person who intends to make, manufacture, repair or sell any weight or measure is required to hold a valid licence issued for this purpose by the controller of metrology of the state.²⁰

The controller can suspend such licence on the ground that the holder of the licence has made any incorrect or false statement in relation to that.²¹ A licence can, however, be suspended only after the holder thereof has been given a reasonable opportunity of showing cause against the proposed action. The suspension of the licence would continue up to the completion of the inquiry or trial against the licence-holder. But, if the inquiry or trial is not completed within three months from the date of suspension of the licence such suspension stands vacated on the expiry of that period. After making the inquiry, if the controller is satisfied that the holder of a licence has made a false or incorrect statement or has contravened any law or order, he can cancel such licence.²²

Any weight or measure can be made or manufactured only if it conforms to the established standards and carries identifications in accordance with the units specified by or under Standards Act.²³ The sale or use of unverified and unstamped weights or measures is also not allowed by the Act.²⁴ Every maker manufacturer, repairer or dealer and every person using any weight or measure in any transaction or for industrial production or for protection has to maintain necessary records and registers and produce such records and registers before the inspector for inspection.²⁵ Having regard to the nature of volume of the business carried on by any maker, manufacturer, dealer, repairer or user of any weight or measure, the controller can exempt him from such requirement, if he is satisfied that it is necessary so to do.²⁶

III. Procedure for Verification and Stamping

Verification and stamping of weights and measures is a must before putting them into use. Verification should take place at a place and time specified for the purpose by the controller on payment of prescribed fee.²⁷ Every weight or measure should be re-verified after prescribed intervals.²⁸

19. *Id.*, sec. 18.

20. *Id.*, sec. 19(1).

21. *Id.*, sec. 20(1).

22. *Id.*, sec. 20(2).

23. *Id.*, sec. 21.

24. *Id.*, sec. 22.

25. *Id.*, sec. 23(1).

26. *Id.*, sec. 23(2).

27. *Id.*, sec. 24(1).

28. *Id.*, sec. 24(2).

However, no periodical re-verification is necessary in relation to any weight or measures used exclusively for domestic purposes.

Every inspector concerned is bound to attend the place of verification of any weight or measure within the local limits of his jurisdiction at the specified time and verify every weight or measure brought to him for verification. If that weight or measure conforms to the established standards, he has to put his stamp thereon.²⁹ Where any weight or measure cannot be moved from its location, the inspector has to take necessary steps for the verification of such weight or measure at the place of its location. The inspector has to grant to the person concerned a certificate in the prescribed form indicating the particulars of the weight or measure verified and stamped by him.³⁰

Where the controller is of the opinion that by reason of the size or nature of any weight or measure, it is not desirable or practicable to put a stamp thereon, a certificate may be issued to the effect that such weight or measure conforms to the established standards.³¹ The certificate is issued in a prescribed form, containing details about its identification.³² Every certificate of verification should be displayed at a conspicuous place in the premises where such weight or measure is being used.³³

IV. Inspection, Search, Seizure and Forfeiture

Section 27 of the Act authorises every inspector, within the local limits of his jurisdiction to inspect and test at all reasonable times, any weight or measure lying with any person, or is in use or likely to be used in any transaction or so. He may also verify its conformity with the established standards.³⁴ For ascertaining the correctness of any weight or measure used in any transaction, an inspector may even test the weight or measure of the article sold or delivered to any person in the course of such transaction.³⁵ On reasonable grounds, an inspector may require any person having custody or control of a weight or measure to produce the same for his inspection which he believes does not conform to the established standards and is likely to be misused.³⁶ The inspector may also require the production of every document or other record relating to such weight or measure.³⁷

29. *Id.*, sec. 24(3).

30. *Id.*, sec. 24(4).

31. *Id.*, sec. 24(5).

32. *Id.*, sec. 24(6).

33. *Id.*, sec. 25.

34. *Id.*, sec. 27(1).

35. *Id.*, sec. 27(2).

36. *Id.*, sec. 28(1).

37. *Id.*, sec. 28(2).

On inspection, the inspector has to obliterate the stamp on any weight or measure which, being due for verification, has not been submitted for such verification; or which, even after the last verification and stamping has been repaired or re-adjusted, does not conform to the established standards. The power can be exercised also if any weight or measure does not admit of proper adjustment by reason of its being broken, indented or otherwise defective or cannot be made to conform to the established standards.³⁸

Where the inspector is of opinion that the defect or error in such weight or measure is not such as to require immediate obliteration of the stamp, he has to serve a notice on the user of such a weight or measure informing him of the defect or error found therein and call upon him to remove the defect or error within the given time, not exceeding eight days. If the user fails to remove the defect or error within that period, he may obliterate the stamp. If the defect or error is so removed as to make the weight or measure conform to the established standards, he has to verify such weight or measure and put his stamp thereon.³⁹ The obliteration of the stamp on any weight or measure does not take away or abridge the power of the inspector to seize such weight or measure.⁴⁰

The inspector may for similar reasons enter at all reasonable times into any premises where any weight or measure has been made, manufactured, repaired, or sold, or used, or kept for use in any transaction in contravention of the provisions of this Act. Such power of the inspector extends even to the cases where goods are manufactured, packed, distributed or sold or kept or offered for sale in packaged form against the requirements of the Act. He can inspect or verify any weight or measure, the net contents of any package, and any document or other records relating thereto.⁴¹ In similar situations, the controller may search or authorise any officer, not below the rank of an inspector, to search and seize such a weight or measure, document or things. The provisions of sections 100 and 102 Cr PC apply to every such search.⁴² Every such authorisation made by the controller is deemed as a warrant referred to in section 93 Cr PC.⁴³

An inspector may seize and detain any weight or measure which is being or has been committed, or is likely to be used in the commission of an offence. He may also seize and detain any goods sold or delivered, or cause to be sold or delivered, by such weight or measure.⁴⁴ Where the goods seized under this sub-section are subject to speedy or natural decay, the

38. *Id.*, sec. 28(3).

39. *Id.*, proviso to sec. 28(3).

40. *Id.*, Explanation to sec. 28(3).

41. *Id.*, sec. 29.

42. *Id.*, sec. 30(1); see Appendix.

43. *Id.*, sec. 30(2); also see Appendix.

44. *Id.*, sec. 31(1).

inspector may dispose of such goods in the prescribed manner. The inspector may further seize and detain any document or other record relating to such weight, measure or article.⁴⁵ The provisions of section 102 of the Cr PC apply to every such seizure.⁴⁶

Every false or unverified weight or measure so seized is liable to be forfeited to government.⁴⁷ However, such unverified weight or measure can be forfeited to the government only if the person from whom weight or measure was seized does not get the same verified and stamped within the time prescribed for this purpose.⁴⁸

The Act declares void every custom, usage, practice or method which permits a person to demand, receive, or cause to be demanded or received, any quantity of an article, thing or service in excess of or less than the quantity specified by weight, measure or number in any contract or other agreement.⁴⁹ Such other customs or usages would also cease to be effective, according to which, in relation to any commodity sold by number, any fixed additional number of such commodity is required to be delivered in addition to the number of commodities paid for.⁵⁰

Where any commodity is sold by heaps, the approximate weight, measure or number of the commodity contained in each heap should be conspicuously disclosed by the seller or his agent either by words or by a written notice placed on each heap.⁵¹ Such an announcement may not necessarily be made in the case of a heap where the total price of the commodity contained in such heap does not exceed two rupees.⁵² Where it is found that the weight, measure or number determined by such weighment, measurement or counting is less than that approximately announced by the seller or his agent and the deficiency is more than five per cent of such announced weight, measure or number, the seller is deemed to have used a false weight or measure.⁵³

V. Offences and Penalties

Making, manufacture, sale or letting on hire any weight or measure not in accordance with any established standards can be punished with imprisonment for a term which may extend from three months to one year, and for the second or subsequent offence, with imprisonment for a term of

45. *Id.*, sec. 31(2).

46. *Id.*, sec. 31(3).

47. *Id.*, sec. 32.

48. *Id.* proviso to sec. 32.

49. *Id.*, sec. 34(1).

50. *Id.*, sec. 34(2).

51. *Id.*, sec. 35(1).

52. *Id.*, proviso to sec. 35(1).

53. *Id.*, sec. 35(2).

not less than six months, but extendable to three years, and also with fine.⁵⁴ Punishment of six months to two years imprisonment has been prescribed for any one who: (a) counterfeits any seal specified by or prescribed under this Act or the Standards Act, or (b) sells or otherwise disposes of any counterfeit seal, or (c) possesses any counterfeit seal, or (d) counterfeits any stamp, specified by or under this Act or the Standards Act, or (e) removes or tampers with any such stamp so made, or (f) removes and affixes the stamp on any other weight or measure, or (g) increases or diminishes or alters in any way any weight or measure with a view to deceiving any person. The second or subsequent offence of this nature is punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.⁵⁵

Unlawful possession or use of any seal, with a view to represent that it is authorised, is punishable with imprisonment for a term which may extend from one year to five years and also with fine.⁵⁶ Unlawful use of a lawfully possessed seal is punishable with imprisonment for a term extending from six months to two years and, for the second or subsequent offences, with imprisonment for a term extending from one year to five years and also with fine.⁵⁷ Same punishment has been prescribed for selling or offering or exposing for sale or otherwise disposing of any weight or measure which bears a counterfeit stamp.⁵⁸

The sale or delivery of any commodity, article or thing by any weight, measure or number other than the standard weight, is punishable with a fine of hundred rupees to two thousand rupees. The second or subsequent offence of this nature is punishable with imprisonment for a term not less than three months but which may extend to one year and with fine.⁵⁹

The punishment for keeping any weight or measure, which is not in accordance with the prescribed standards, in such a way as to indicate that it is being used, or is likely to be used for any weightment or measurement, is fine which may extend to two thousand rupees. The second or subsequent offence of this nature can attract a punishment of one year imprisonment and fine.⁶⁰

If any person is found selling any article or thing by weight, measure or number, but the delivery made to the purchaser is less than the quantity or number contracted and paid for, will be punished with a fine of five thousand rupees. Same is the punishment for rendering lesser services

54. *Id.*, sec. 36.

55. *Id.*, sec. 37(1).

56. *Id.*, sec. 37(2).

57. *Id.*, sec. 37(3).

58. *Id.*, sec. 37(4).

59. *Id.*, sec. 37(4).

60. *Id.*, sec. 38(1).

contracted and paid for. Accordingly, receiving any quantity or number of an article or thing in excess of the quantity or number contracted and paid for and obtaining service in excess of the service contracted and paid for, is punishable with fine which may extend to five thousand rupees. The second or subsequent offences of all these kinds are punishable with imprisonment for a term which may extend to one year and also with fine.⁶¹

Entering into any contract or other agreement (not for export) by using non-standard weight, measure or number is punishable with fine which may extend to two thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.⁶²

Use of weights, measures or number, other than those specified by the state government in relation to any class of goods, services, undertakings etc. under section 10 of the Act can be punished with fine which may extend to two thousand rupees, and the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.⁶³

The offences defined under section 11 of the Act are punishable with fine which may extend to two thousand rupees, and any second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine. These include: ⁶⁴

- (a) quoting any price or charge or makes any announcement with regard to the price of charge, or
- (b) issuing or exhibits any price list, invoice, cash memo or other document, or
- (c) mentioning any weight or measure in any advertisement, poster or other document, or
- (d) indicating the weight, measure or number of the net contents of any package or on any label, carton or other thing, or
- (e) expressing, in relation to any transaction, industrial production or protection, any quantity or dimension, otherwise than in accordance with the standard weight or measure.

If any person makes, manufactures, repairs or sells or offers, exposes or possesses for repair or sale any weight or measure, without a valid licence can be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both and for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.⁶⁵ A licensee who after

61. *Id.*, sec. 39(2).

62. *Id.*, sec. 39(3).

63. *Id.*, sec. 40.

64. *Id.*, secs. 11 and 41.

65. *Id.*, secs. 19 and 42.

the suspension or cancellation of the licence omits or fails to stop functioning as a licensee under this Act, can be punished with imprisonment for a term which may extend to one year.⁶⁶

Making or manufacturing any weight or measure which, ostensibly but not actually, conforms to the established standards is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.⁶⁷ Selling, using or keeping for use, any unverified or unstamped weight or measure can be punished with imprisonment for term which may extend to six months or with fine which may extend to one thousand rupees, or with both, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.⁶⁸ This does not apply, in relation to any weight or measure which is used for domestic purposes.⁶⁹

Any omission to maintain or produce any records or register in accordance with the provisions of this Act is punishable with fine which may extend to one thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.⁷⁰ Penalty for giving false information about maintaining false records or registers is imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.⁷¹ Maintaining of false records or registers is punishable with fine which may extend to two thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.⁷²

Omission to present any weight or measure for verification or re-verification without any reasonable cause can be punished with fine which may extend to five hundred rupees, and for the second or subsequent offence, with imprisonment for a term which may extent to one year and also with fine.⁷³ Similarly, failure to produce for inspection any weight or measure or any document or other record relating thereto, without any reasonable cause, is punishable with fine which may extend to one thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.⁷⁴

66. *Id.*, secs. 20 and 43.

67. *Id.*, secs. 21 and 44.

68. *Id.*, secs. 22 and 45.

69. Proviso to sec. 45.

70. *Id.*, secs. 23 and 46.

71. *Id.*, sec. 56(1).

72. *Id.*, sec. 56(2).

73. *Id.*, secs. 24 and 47.

74. *Id.*, sec. 28 and 48.

Obstructing the entry of an inspector, or any authorised person into any premises for the inspection and verification of any weight or measure or any document or other record or the net contents of any packaged commodity or for any other prescribed purpose is also punishable under the Act. The prescribed punishment in this respect is imprisonment for a term which may extend to two years, and for the second and subsequent offence, imprisonment for a term which may extend to five years.⁷⁵ Similarly, preventing the controller or any authorised officer from searching any premises or preventing an inspector from making any seizure of any weight, measure, packaged commodity, goods, document, record or label, is punishable with imprisonment for a term which may extend to two years, and for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.⁷⁶

Manufacture, distribution, packaging or sale etc. of any commodity in packaged form without conforming to the standards established for these purposes can be punished with fine which may extend to five thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.⁷⁷ Manufacture, packing, distribution or sale of any commodity in packaged form, knowing or having reason to believe that it is lesser in weight, measure or number than that stated on the package or label is punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both. Any such second or subsequent offence is punishable with imprisonment for a term which may extend to five years and also with fine.⁷⁸ In determining whether the quantity contained in a package is lesser than the quantity declared on the package or label, the maximum permissible error specified under the Standards Act in relation to the respective commodity has to be taken into account.⁷⁹

Selling any commodity by heaps without complying with the requirements prescribed in this regard is punishable with fine which may extend to one thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.⁸⁰

Penalty for tampering with licence is fine which may extend to two thousand rupees or imprisonment which may extend to one year, or with both.⁸¹ Selling or delivering rejected weights and measures is punishable

75. *Id.*, sec. 29 and 49.

76. *Id.*, secs. 30, 31 and 50.

77. *Supra* note 1, sec. 51(1).

78. *Id.*, sec. 51(2).

79. Explanation to sec. 51.

80. *Id.*, sec. 52; see *supra* note 47 to 49.

81. *Id.*, sec. 53.

with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.⁸² However, this does not apply to the sale, as scrap, or any rejected weight or measure.⁸³ The personation of officials is also punishable. Each such offence is punishable with imprisonment for a term which may extend to three years.⁸⁴

If any inspector or any other officer exercising powers under this Act or any rule made thereunder wilfully verifies or stamps any weight or measure in contravention of the prescribed standards, he can be punished for every such offence with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.⁸⁵ Wilful disclosure by an inspector of information obtained by him during inspection of any premises with regard to any trade secret manufacturing process, can be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.⁸⁶ Conduct of any search or seizure by an inspector without any reasonable ground is punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.⁸⁷ Contraventions for which no punishments have been separately provided, are punishable with fine which may extend to two thousand rupees.⁸⁸

As regards the offences under the Act, the presumptions are against the accused. Thus, where a person manufactures a false weight or measure or uses any false or unverified weight or measure in any transaction or sells, distributes or delivers such weight or measure, it would be presumed that he had the knowledge that the weight or measure was false.⁸⁹ Likewise, having in possession or control a false or unverified weight or measure raises the presumption that such weight or measure was held by the person concerned with the intention of using the same in any transaction and the burden would be on him to prove that he had no such knowledge or intention.⁹⁰

The Act makes certain provisions about the abatement of offences by employers. It provides that if an employer, knows or has reason to believe that any of his employees has, in the course of such employment, contravened any provision of this Act or any rule made thereunder he would

82. *Id.*, sec. 54.

83. *Id.*, proviso to sec. 54.

84. *Id.*, sec. 55.

85. *Id.*, sec. 57(1).

86. *Id.*, sec. 57(2).

87. *Id.*, sec. 58.

88. *Id.*, sec. 59.

89. *Id.*, sec. 60(1).

90. *Id.*, sec. 60(2).

be deemed to have abetted such offence.⁹¹ However, no such abetment can be deemed to have taken place if such an employer has, before the expiry of seven days from the date on which he comes to know of the contravention, or he has reason to believe that such contravention has been made, intimated in writing to the controller the name of the person by whom such contravention was made and the date and other particulars of such contravention.⁹² The punishment for abetment of an offence under the Act is imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both. For the second or subsequent offence, the punishment is imprisonment for a term which may extend to five years and also fine.⁹³ Dismissal or termination of service of an employee after the expiry of the specified period will not absolve the employer of the said liability.⁹⁴

The companies are also liable for offences under the Act and 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, as well as the company, is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly.⁹⁵ The person concerned can escape liability if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such an offence.⁹⁶ If it is proved that the offence 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 is deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.⁹⁷

Delay in launching proceedings has been a subject of certain cases under the Act. In *M/S Keciyo Coconut Oils Pvt. Ltd. and Others v. State of Kerala*,⁹⁸ there were allegations against the accused about use of weights and measures without registration and non-maintenance of records, but the court had acquitted the petitioners of these charges in an earlier case on the same facts, invoking bar by limitation under section 468 Cr PC. The proceedings against the petitioners were held as not maintainable in the subsequent proceedings as there was specific bar for prosecuting them under section 300 Cr PC for the same offence. In *State of Maharashtra v.*

91. *Id.*, sec. 61(1).

92. *Id.*, proviso to sec. 61(1).

93. *Id.*, sec. 61(2).

94. *Id.*, explanation to sec. 61.

95. *Id.*, sec. 62(1).

96. *Id.*, proviso to sec. 62(1).

97. *Id.*, sec. 62(2).

98. 2002 Cri LJ 1087.

S. V. Dongre,⁹⁹ the Supreme Court has held that the delay in launching prosecution cannot be condoned without notice to the accused. No notice was given by the court below to the petitioners herein regarding consideration of the question of condoning the delay for launching the prosecution. The court allowed the petition and quashed the proceedings pending against the petitioner.

In *M/S Lucas Indian Service Limited, Madras and Others v. State of Andhra Pradesh*,¹⁰⁰ the allegation against the petitioners was that they were the wholesale distributors of automobile services. The package of the accused was bearing the retail sale price declaration as 'M.R.P.' instead of 'Maximum Retail Price'. The complainant seized those packages and filed a charge sheet. After trial, the petitioners were convicted and sentenced to pay fine. They preferred appeal challenging the conviction and the sentence on the ground that the findings were contrary to law and facts and that the prosecution failed to prove the guilt of the accused. The court ruled that for the words 'Maximum Retail Price' it would be sufficient if "M.R.P." is marked thereon. In fact, the rule had been later amended to that effect.

VI. Cognizance of Offence

Notwithstanding any provisions of the Cr PC, any court can take cognizance of an offence punishable under this Act only upon a complaint, in writing, made by the controller or any other authorised officer or any aggrieved person or a recognized consumer association. The offence, however, cannot be tried by any court inferior to the court of a metropolitan magistrate or judicial magistrate of first class.¹⁰¹ Certain offences are triable summarily. These includes:

- (a) manufacturing and sale of non-standard weights and measures;
- (b) sale or delivery of commodities by non-standard weights or measures;
- (c) keeping for use non-standard weights and measures;
- (d) use of weights and measures other than the specified for a particular purpose;
- (e) issuing quotations etc. in non-standard weights and measures;
- (f) manufacture, sale or repair of weights and measures without licence;
- (g) sale or use of unstamped weights and measures;
- (h) sale by heaps not following the provisions of the Act; and
- (i) any violation of the rules under the Act.¹⁰²

99. AIR 1995 SC 231.

100. 1999 Cri LJ 1647.

101. *Id.*, sec. 63.

102. *Id.*, secs. 64; see for such offences *supra* notes 49, 55 to 60, 63, 76 and 79.

VII. Compounding of Offences

Offences which are compoundable under section 65(1) of the Act include:

- (a) keeping and use of non-standard weights or measures;¹⁰³
- (b) false quotes, announcements etc.;¹⁰⁴
- (c) non-possession of a valid licence;¹⁰⁵
- (d) possession or use of unverified and unstamped weights or measures;¹⁰⁶
- (e) failure to maintain records and registers;¹⁰⁷
- (f) omission to present units for verification or re-verification;¹⁰⁸
- (g) failure to produce for inspection weights, measures etc.;¹⁰⁹
- (h) sale of commodities by heaps without following prescribed procedures;¹¹⁰
- (i) selling or delivering rejected weights or measures;¹¹¹ and
- (j) offences for which penalty is not prescribed.¹¹²

Any such offence may be compounded by the controller or an authorised officer on payment, for credit to the state government, of a specified amount not exceeding the maximum amount of the fine prescribed for that offence.¹¹³ Provisions regarding compounding of offences do not apply to a person who commits the same or similar offence again within a period of three years from the date on which the first offence, committed by him, was compounded.¹¹⁴ But any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, is deemed to be the first offence.¹¹⁵

Where an offence has been compounded, no proceeding or further proceeding, as the case may be, can be taken against the offender, in respect of the offence so compounded, and the offender, if in custody, has to be discharged forthwith.¹¹⁶ The provisions of the IPC, in so far as such

103. *Id.*, secs. 39, 40 and 44.

104. *Id.*, sec. 41.

105. *Id.*, sec. 42.

106. *Id.*, sec. 45.

107. *Id.*, sec. 46.

108. *Id.*, sec. 47.

109. *Id.*, sec. 48.

110. *Id.*, sec. 52.

111. *Id.*, sec. 54.

112. *Id.*, sec. 59.

113. *Id.*, proviso to sec. 65(1).

114. *Id.*, sec. 64(2).

115. *Id.*, explanation to sec. 64(2).

116. *Id.*, sec. 65(3).

provisions relate to offences with regard to weights or measures, do not apply to any offence, which is punishable under this Act.¹¹⁷

For its effective implementation, the Act requires the states to create necessary infrastructure, but the paucity of funds is generally being pleaded as justification for not setting up effective administrative structure for the enforcement of the Act. The law provides for the appointment of controllers of legal metrology and other officers in each state as may be necessary, but still the results are not satisfactory. One of the most important functionaries is the inspector who has been given the power of inspection, search and seizure of weights and measures. It is very difficult to assume that fairness is being observed by such authorities. A mechanism of making profits and also allowing the system go is the trend, as formal corruption rackets have come into existence. The provisions of the Act are otherwise very strict.

Under the Act, most of the offences are punishable with imprisonment ranging from one to five years. In the case of some serious offences, a minimum sentence of 3 to 6 months has to be imposed. But the Act is generally not being invoked to contain the culprits. This is obvious from sufficient case law being not available on the subject.

117. *Id.*, sec. 66.