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Reforming the Legal Metrology Regime

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EAC-PM Working Paper

Reforming the Legal Metrology Regime

EXECUTIVE SUMMARY

The Legal Metrology Act, 2009 ("2009 Act") which establishes and enforces the standard of weights, measures and labels used in the commercial sector, has long been subjected to criticism for harsh punitive measures and complexity of its labeling regulations. It remains a stumbling block in improving India's ease of doing business. This working paper focuses on addressing the three major issues under the 2009 Act. First, the criminalization of offences under the 2009 Act; second, the complexity of 2011 regulations under the 2009 Act that deal with labeling requirements on packaged products which creates opportunity for local inspectors to issue notices for technical/minor violations and third, the multiple changes to these 2011 regulations which make compliance difficult and expensive.

The 2009 Act has provision for imprisonment as a punishment for offences under it. Sections 25-47 in Chapter V of the 2009 Act list out various offenses related to weights, measures and labels. They include use and manufacture of non-standard weighing and measuring instruments, undertaking commercial transactions in violation of prescribed standards and transacting in pre-packaged commodities without requisite declarations on the package. As the law stands today, the first violation of any of the offences under Chapter V by an enterprise entails a monetary penalty. However, upon a second or subsequent offence committed under the same provision, the 2009 Act provides for imprisonment up to three years along with a possible fine (the Jan Vishwas Bill brings the maximum punishment down to one year).

Given the threat of imprisonment, the criminalisation of second and subsequent offences under the 2009 Act has distorted the balance between empowering the legal metrology inspector and securing the dignity of legitimate entrepreneurs. The current system of using imprisonment as a tool to control entrepreneurs has given local officials multiple opportunities to indulge in rent-seeking by filing a first offence on trivial grounds and then threatening criminal prosecution for subsequent offences. Evidence for this behaviour is available in the data released by PIB in its May 2022 report on the National Workshop on Legal Metrology Act, 2009. ***Over a four year period from 2018-2022, for an average of approximately 100,000 first offences booked per year, only EIGHT instances of second offences being booked are reported in India.***

The government is aware of this problem caused by criminalisation of offences under the 2009 Act and has proposed to decriminalize several provisions of the Act under the Jan Vishwas Bill 2022 which was passed by the Parliament in the Monsoon Session 2023. While this is a good beginning, the Jan Vishwas Bill only solves a part of the problem caused by the criminalisation of offences under the Act. According to the same PIB report, the offences under section 30 (penalty for transactions in contravention of standard weight or measures), section 33 (penalty

for use of unverified weight or measures) and section 36 (penalty for selling of non-standard packages) are responsible for over seventy percent of the cases under the 2009 Act. Offences under these three sections are still criminalized.

The Union Ministry for Consumer Affairs had conducted extensive consultations with all stakeholders, including state governments and consumer protection groups, to make efforts towards decriminalizing the remaining offences under the 2009 Act in due course without compromising on consumer protection. This is in line with recommendations of the 2020 Consultation Paper issued by the Legal Metrology Division of the Department of Consumer Affairs, Government of India.

Several major economies around the world (including UK, USA, Australia and Canada) have underscored the need to shift from an adversarial and prescriptive legal metrology framework to a more principle-based framework that is simpler and focused on ensuring compliance. The Australian government's series of 2018-19 discussion papers on the review of their national legal metrology laws is one of the most comprehensive resources on the subject. It concludes, *"A predominantly civil penalty regime may be more appropriate for the majority of offences under the measurement framework and fairer for offenders, as administrative and low level offences would no longer be criminalized."*[1]

Our analysis of other countries suggests that India should opt for a system of graded fines (for up to fourth offence, as suggested by some state governments) and remove provisions for imprisonment. In case we decide to keep provisions on imprisonment, it should only be retained for extreme cases and repeated offences, in a way that consumer rights are adequately protected. We are not arguing for entirely doing away with criminal provisions but ensuring that, in light of international experience, there are sufficient safeguards that make it difficult to trigger excessively harsh penalties or imprisonment for most offences. For example, under Canada's Weights and Measures Act 1985 there is a due diligence defense which prevents conviction under the Act for almost all offences if a person can establish that they exercised due diligence to prevent the commission of the offence.

Secondly, the complexity of Legal Metrology (Packages Commodities) Rules, 2011 under the 2009 Act ("2011 Packaging Rules") which regulate the sale of pre-packaged commodities is another issue that needs the attention of our policymakers. The 2011 Packaging Rules are part of a larger web of packaging regulations issued by various ministries with respect to labeling requirements that businesses have to comply with. The complexity of packaging regulations provides opportunities for legal metrology inspectors to issue notices on frivolous grounds of minor/technical non-compliance. Some examples of such grounds include: an alphabet is capitalized, a word is abbreviated, not mentioning of the word "net quantity", declaring MRP without decimal points, minor deviation in the height of letters and numerals is respect of label declarations, spacing around Net Quantity is not as specified in the PC Rules. These inadvertent lapses, often with little impact on the legibility of important information, are tried stringently thereby imposing undue hardship on the entrepreneur.

[1] Supra note 10

In addition to the simplification of 2011 Packaging Rules, the government may consider process changes like instituting a mechanism of issuing improvement notices to fix technical errors before proceeding with enforcement action against erring entrepreneurs, allowing for non-essential information to be displayed using QR codes (something that the government has already allowed for electronic items and mandated for best-selling medicines). Cost-effective corrective measures such as use of stickers over existing labels for imported goods may also be considered to introduce some much-needed flexibility in a complex and rigid system.

Thirdly, the frequent changes in their requirements makes compliance difficult and expensive because it distorts the timelines required for printing of labels. Frequent changes also increase the risk of violations for entrepreneurs because there will always be packaging material in the supply chain that does not comply with the new rules and have to be scrapped or recalled. The government may consider putting in place a system to assimilate all the statutory/regulatory mandates from respective Ministries and Departments around labeling related changes and notify them twice a year on pre-announced fixed dates. This is akin to the Consolidated FDI Policy Circular where the government consolidates policy changes on foreign investment at one place or Master Circulars issued by RBI and SEBI on important topics. A similar consolidated policy for labeling changes will be transparent, predictable and will greatly improve the ease of doing business in India.

I. INTRODUCTION

The government has an important role to play in standardizing weights and measures to build trust among buyers and sellers so that commercial activity flourishes in a society. Indian policymakers understood this since the days of Indus Valley civilization. Even the *Arthashastra* by Kautilya has a detailed chapter on creation of a reliable system of weights and measures and its enforcement by a Superintendent of Standardization. In the Indian constitution, the responsibility for the establishment of standards of weight and measure is with the Union government under Entry 50 of the Union List under the Seventh Schedule of the Constitution of India. Except for the establishment of standards, the administration of the legal metrology regime is under Entry 33A of the Concurrent List[2]. It was shifted from the State List to the Concurrent List under the 42nd Amendment to the Constitution in 1976. The Legal Metrology Act 2009 ("2009 Act") accordingly divides the responsibilities for establishment and enforcement of these standards between the union and state governments.

The 2009 Act replaced two legislations - Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985. It regulates manufacture and sale of measuring instruments and trade and commerce in goods which are sold by weight, measure or number. Uniformity and predictability in measurement of products is the foundation of all commercial activity in a society. Therefore, effective implementation of this law, which balances consumer protection without imposing undue hardship on enterprises, is of paramount importance in developing India's manufacturing capabilities and reducing the cost of doing business in the country.

A healthy regulatory framework of legal metrology ensures the protection of a consumer while at the same time providing a peaceful and non-intrusive operating environment for businesses. To ensure these twin objectives are fulfilled, the law and compliance requirements must be simple and easy to implement for entrepreneurs. There must be a system of calibrated action against non-compliance which means that while habitual offenders must suffer deterrent punishment, honest businesses should not be unnecessarily harassed. Negligence or inadvertent omission in compliance with the requirements of 2009 Act, where there is no element of criminal intent (*mens rea*), should not lead to criminal liability for entrepreneurs, especially small businesses.

Historical Background of Criminalization of Legal Metrology Offences

The metric system was adopted as the uniform system of weights and measures under the Standards of Weights and Measures Act, 1956 ("1956 Act"). This law contained no provision for criminal punishment for violation of any of its provisions. Even the state legislations enacted to implement the 1956 Act had limited penal provisions confined to contravention of these standards in the course of commercial transactions. This raises the question of how did India end up with a legal metrology regime with extensive criminal provisions under the 2009 Act?

[2] Concurrent List under Seventh Schedule of the Constitution of India: "Entry 33A. Weights and measures except establishment of standards."

In 1972, a Committee was set up under the chairmanship of Mr. S K Maitra (Joint Secretary in the Law Ministry) to review the Standards of Weights and Measures Act, 1956. Their proposals formed the basis of the 1976 Act which was followed by the 2009 Act. The recommendations of this committee formed the basis for criminalisation of offences under the 1976 Act and later the 2009 Act.

The Maitra Committee came to the conclusion that monetary penalties were not a sufficient deterrent and offences should be criminalized based on the anecdotal evidence of the behaviour of sweet sellers who, according to the committee, had developed the practice of weighing sweets with their cardboard box before giving it to the customer. The report goes on to fulminate against this practise with informal calculations on how much extra profit a sweetmeat shop owner would make by such behaviour: *"The customer thus loses sweets worth about 50P to 90P per kilogram, the price of cardboard box being 30P or so. In this way the owners of sweetmeat shops are making an extra profit and the quantum of such profit would not be less than Rs. 5.00 to Rs. 10.00 per hour in a shop having brisk business. In such a shop, the extra profit may amount to Rs. 60/- to Rs. 120/- per day of 12 working hours. The extra profit thus made in the course of one year of 300 working days would come to about Rs. 18,000/- to Rs. 36,000."*[3]

Note that this was not based on any survey of actual practice but back-of-envelope calculations. Accordingly, the committee came to the conclusion that *"the shopkeeper who makes extra profit by such sharp practice is not ordinarily expected to give up such a lucrative practice unless the law provides for deterrent sentences for its violation."* [4]

Thus, the anecdote-based policymaking by the Maitra Committee has meant that for over four decades legitimate entrepreneurs have been subjected to undue persecution by legal metrology inspectors and the law has added to the regulatory cholesterol of doing business in India. It is time to undo the blunders of the Maitra Committee by reworking the 2009 Act and decriminalizing all offences under it.

II. CRIMINALISATION OF OFFENCES

The 2009 Act has long been subjected to criticism for the provision for imprisonment as a punishment for offences under it. Sections 25-47 in Chapter V of the 2009 Act list out various offences related to weights and measures. In its present form, the law prescribes imprisonment, in addition to fine, for the second or subsequent offences. In the case of companies, a contravention of the provisions of the 2009 Act can make the designated director of a company criminally liable for the offence. It is to be noted that Section 51 of the 2009 Act clearly states that provisions of the Indian Penal Code and section 153 of the Code of Criminal Procedure,

[3] *Report of the Weights and Measures (Law Revision) Committee ("Maitra Committee")*, Ministry of Commerce, Government of India, 15 May 1972 See:
https://indianculture.nvli.in/report-weights-and-measures-law-revision-committee-maitra-committee
[4] Ibid

1973 in so far as such provisions relate to offences with regard to weight or measure, shall not apply to any offence which is punishable under this Act.

Suboptimal Status-Quo under the 2009 Act

As the law stands today, the first violation of any of the offences under Chapter V of the 2009 Act by an enterprise entails a monetary penalty. Upon inspection or complaint, a legal metrology inspector may issue a notice to a person for a violation of any provision under Chapter V. After receiving a notice by the inspector, the person concerned may concede their mistake, decide not to contest the charges and pay a fee to end all legal proceedings (called “compounding”). Alternatively, the person may appeal the decision of the inspector to the controller of legal metrology and subsequently to the state government. If the person has neither compounded the offence nor filed an appeal, the inspector may file a case in the court of law to initiate legal proceedings.

However, upon a second or subsequent offence committed under the same provision, the 2009 Act provides for imprisonment along with a possible fine. In the case of companies, a contravention of the provisions of the 2009 Act can make the nominated director of a company criminally liable for the offence. The current system has multiple opportunities for local officials to indulge in rent-seeking by filing a first offence on trivial grounds and then threatening criminal prosecution for subsequent offences.

Evidence for this behaviour is available in the data released by PIB in its May 2022 report on the National Workshop on Legal Metrology Act, 2009. The table below captures the data on 1st and 2nd offences under 2009 Act for the last four years based on PIB records. In the year 2018-19, the number of first offences booked under the 2009 Act was 1,13,745 by States and UTs. However the number of second offences booked was only 12. The corresponding numbers for first and second offences in 2019-20 were 1,26,409 and 5. In 2020-21 this number was 82,279 and 3 for States and UTs across India. In 2021-22, 74,721 first offences and 11 second offences were booked by the government’s own records.

Table 1: First and Second Offences under the 2009 Act from 2018-2022

Cases/Years	**2018-19**	**2019-20**	**2020-21**	**2021-22**
1st Offence cases booked	1,13,745	1,26,409	82, 279	74, 721
1st Offence cases compounded	97,690	1,24,502	74, 230	55, 779
2nd Offence cases booked	12	5	3	11
2nd Offence cases filed in court of law	4	3	3	7

Source: PIB data

In his inaugural address at the national workshop where this data was released, the Union Minister of Consumer Affairs, Food and Public Distribution Mr. Piyush Goyal referred to these skewed numbers while urging the state governments to support the initiative to decriminalize the provisions of 2009 Act so that the interests of the consumers are balanced with the removal of undue hardship on businesses, especially small enterprises[5].

The Minister said, *"Why are there so many first offenses and second offenses are Nil? How many cases are there as 2nd offense in respective states? What has the State Government done when there is no second offense?...Keeping this trend in mind, the number of offenses should gradually drop to Nil"*[6]. His views were reiterated by Mr. Ashwini Choubey (Union Minister of State for Consumer Affairs) who noted at the same event that *"stigmatizing the industry is not conducive to the economy and there is a need to protect businesses, specially small business, from harassment of official machinery for them to prosper."*[7]

The government is aware of this problem caused by criminalisation of offences under the 2009 Act and has proposed to decriminalize several provisions of the 2009 Act under the Jan Vishwas Bill 2022 which was passed by both houses of the Parliament in the 2023 Monsoon session. After receiving the signature of the President of India and being published in the official gazette, it will become the law of the land.

Specifically, the Jan Vishwas Bill decriminalizes section 25 (use of non-standard weights), section 27 (manufacture of non-standard weights and measures), section 28 (making a transaction in contravention of the prescribed standards), section 29 (penalty for publishing non-standard units), section 31 (penalty for non-publishing of documents and registers related to the law), section 34 (penalty for sale of commodities by non-standard measure) and section 35 (penalty for rendering services by non-standard weight).

While this is a good beginning, the Jan Vishwas Bill only solves a part of the problem caused by the criminalisation of offences under the 2009 Act. As per the same PIB report, the offences under section 30 (penalty for transactions in contravention of standard weight or measures), section 33 (penalty for use of unverified weight or measures) and section 36 (penalty for selling of non-standard packages) are responsible for over seventy percent of the cases under the 2009 Act. Offences under these three sections are still criminalized. This is evident from the table below.

Table 2: Distribution of First Offences under 2009 Act from 2018-2022

[5] PIB Press Release dated 9 May 2022, See: https://pib.gov.in/PressReleasePage.aspx?PRID=1823947
[6] Ibid
[7] Ibid

Section/Year	2018-19		2019-20		2020-21		2021-22	
Section	First Offence	Offence in %	First Offence	Offence in %	First Offence	Offence in %	First Offence	Offence in %
33	59,363	52.19	67,507	53.4	37,412	45.47	35,840	47.97
36(1)	25,531	20.69	23,823	18.85	16,526	20.09	12,813	17.15
25	13,264	11.66	12,447	9.85	9303	11.31	8626	11.54
30	13,264	11.66	8982	7.11	8046	9.78	6447	8.63
Offences in other section	4323	3.80	13,650	10.80	10,992	13.36	10,995	14.71
Total	113,745		126,409		82,279		74,721	

Source: PIB data

International Experience

Several major economies around the world (including UK, USA, Australia and Canada) have underscored the need to shift from an adversarial and prescriptive legal metrology framework to a more principle-based framework that is simpler and focused on ensuring compliance. In most jurisdictions around the world, legal metrology laws do have criminal provisions however procedural or technical lapses are not punished by imprisonment but only with a monetary penalty.

For example in the USA, the Federal Food, Drug, and Cosmetic Act 1938 (FD&C Act) is the main federal law regulating the safety of most foods, dietary supplements, prescription and non-prescription drugs, medical devices, cosmetics, and tobacco products. It is enforced by the U.S. Food and Drug Administration (FDA). A Congressional Research Service Report of February 2018[8] notes that criminal prosecutions under the FD&C Act are rare, with one commentator finding that "only a miniscule fraction of 1 percent of the FDA's inspections will result in criminal prosecution," and "extremely technical infractions" of the Act are very unlikely to result in criminal punishment. As per the report, FDA affords individuals and firms an opportunity to comply voluntarily prior to initiating a criminal prosecution, as long as "a violative situation does not present a danger to health or does not constitute intentional, gross or flagrant violations."

Similarly, under the Food Information Regulations 2014 of UK, a person guilty of an offence under the 2014 Regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or both. This is in contrast to provisions for imprisonment in India's 2009 Act where punishments can go up to

[8] *Enforcement of the Food, Drug, and Cosmetic Act: Select Legal Issues*, Congressional Research Service Report, February 2018. See: https://crsreports.congress.gov/product/pdf/R/R43609

three years (the Jan Vishwas Bill brings the maximum punishment down to one year). The UK has a system of scales/levels of monetary penalty based on the seriousness of the violation. According to the Sentencing Council of UK (an independent, non-departmental public body which issues guidelines for sentencing that courts must ordinarily follow), a fine must not exceed the statutory limit. Where this is expressed in terms of a 'level', the maxima are as follows: Level 1 - £200; Level 2 - £500; Level 3 - £1,000; Level 4 - £2,500; Level 5 - Unlimited.

In 2018-19, Australia conducted a review of its measurement laws that are based on the National Measurement Act 1960 and its associated regulations. The government issued a series of discussion papers to anchor the conversation on reform of legal metrology laws which are one of the most comprehensive resources on the subject. In these papers, they made the following important two observations: First, the need to shift from a prescriptive legislation which sets out specific rules to a principle-based legislation which is more sensitive to the varied business circumstances in which measurement laws have to be applied[9]. Second, the relative inefficiency of older compliance and enforcement models (which are reactive, adversarial and incident-driven) compared to newer compliance and enforcement approaches (which are preventive, focus on providing compliance assistance and don't impose disproportionate sanctions against well-intentioned people).[10]

The government of Australia acknowledged that *"individuals are motivated by different factors and successful regulators should retain a wide variety of toolbox of compliance powers, which they can escalate in severity in response to more serious contraventions of law…government cannot regulate to remove all risks and that regulatory action should be proportionate, targeted and based on risk assessment."*[11]

The National Measurement Institute (NMI) of Australia is the nodal authority for enforcement of its measurement laws. The discussion paper on compliance arrangements states that the NMI applies an escalating model of compliance based on risk[12]. Under this model, where non-compliance results in low harm and there is minimal likelihood of continued non-compliance, then low-level compliance options are used. As the risk and harm associated with non-compliance increases, or where there is repeat non-compliance, the NMI uses harsher enforcement mechanisms[13].

A key focus of the 2018-19 reforms by the Australian government was to minimise the offences which attract criminal penalties under their measurement laws. To quote, *"However, in a more*

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[9] *Discussion Paper: Scope of Australia's Measurement Laws*, Measurement Law Review, May 2018, Department of Industry, Innovation and Science, Government of Australia. See: https://storage.googleapis.com/converlens-au-industry/industry/p/prj1a483dafd36cf674bafbb/public_assets/Scope%20of%20Australias%20Measurement%20Laws%20Discussion%20Paper%20Topic%201.pdf

[10] *Discussion Paper: Compliance Arrangements*, Measurement Law Review 2019, Department of Industry, Innovation and Science, Government of Australia. See: https://storage.googleapis.com/converlens-au-industry/industry/p/prj1a483e7cd96cfae291159/public_assets/Discussion%20Paper%206%20Compliance%20Arrangements.pdf

[11] Ibid

[12] Ibid

[13] Ibid

modern compliance framework it may be inappropriate for the majority of the provisions in the legislation to contain offences. The same outcomes in terms of compliance goals could be achieved through provisions that carry civil penalties, as opposed to criminal offences. This would provide additional flexibility in the compliance options available to the NMI, as well as more appropriately rounding out its enforcement pyramid, reserving criminal offences more severe conduct where the harm or impact is likely to be high or wide spread."[14]

The discussion concludes, *"A predominantly civil penalty regime may be more appropriate for the majority of offences under the measurement framework and fairer for offenders, as administrative and low level offences would no longer be criminalized. This could allow for greater flexibility in the compliance options available to the NMI and lead to more appropriate escalation of the compliance options used to address repeat or deliberate acts of non-compliance. Some offences could carry both a criminal and civil penalty, affording greater flexibility in the available enforcement options. It may also be possible to attach infringement notices to civil penalty provisions where the contravention is minor and no proof of fault element or state of mind is required."*[15] As we can see, while there are some criminal provisions in other legal metrology regimes, minor violations are not usually criminalized.

Rationale for Decriminalization

To build consensus on decriminalizing the remaining provisions as per the recommendations of the 2020 consultation paper issued by the Ministry of Consumer Affairs, the Union government has held several rounds of consultation with all stakeholders since 2020, especially the state governments since this is subject under the concurrent list of the Constitution. Given the international experience, our analysis suggests that for India, a system of escalating fines (for up to fourth offence, as suggested by some state governments) and removing provisions for imprisonment, is preferable than the status quo. In case we decide to keep provisions on imprisonment, it should only be retained for extreme cases and repeated offences, in a way that consumer rights are adequately protected.

We are not arguing for entirely doing away with criminal provisions but ensuring that there are sufficient safeguards that make it difficult to trigger excessively harsh penalties or imprisonment for most offences. For example, under Canada's Weights and Measures Act 1985 there is a due diligence defense which prevents conviction under the Act for almost all offences if a person can establish that they exercised due diligence to prevent the commission of the offence[16].

Proportionality of offence and punishment is the bedrock of a healthy justice system. Criminal offences are fundamentally different from civil offences in terms of their impact on society's perception of fear and security, the status of the accused, burden of proof and the

[14] Ibid
[15] Ibid
[16] Section 35.1 of Weights and Measures Act R.S.C. 1985: "35.1 A person may not be convicted of an offence under this Act — other than for a contravention of paragraph 29(b), subsection 30(1) or 31(2) or section 32 — if they establish that they exercised due diligence to prevent the commission of the offence."

consequences that fall upon the accused once guilt is established. Because criminal offences increase the sense of fear and insecurity in all members of society, the entire society suffers moral costs as an indirect victim. Therefore, the government fights the case on behalf of the entire society through its legal officers.

Further, the consequences for the offender are more serious i.e. they are deprived of their liberty by being forced to undergo imprisonment. To ensure that only proven offenders are denied their liberty and no innocent person suffers this serious deprivation, criminal offences require a standard of proof ("establishment of guilt beyond reasonable doubt") which is much higher than civil offences ("balance of probabilities"). The establishment of criminal intent (called *mens rea* in legal parlance) needs a more rigorous legal examination and therefore criminal cases take a lot of valuable time from courts and legal officers.

In civil cases by contrast, the usual remedies upon being held guilty is the imposition of a monetary penalty and an injunction to stop or perform a certain action to restore the rights of the affected party. Given this background, there has been a long-standing demand from academics, policy-makers and entrepreneurs that offences in the course of doing business which are of technical nature and non-compliance with regulations due to inadvertent omission must be decriminalized. If a monetary penalty and other deterrents like cancellation of license are deemed sufficient to prevent violations, it may be advisable to remove provisions for imprisonment of entrepreneurs to restore the balance of power between local inspectors and entrepreneurs which is currently skewed.

A 2020 Consultation Paper issued by the Legal Metrology Division of the Department of Consumer Affairs, Government of India takes this view. To quote: *"The offences which can be decriminalized should not have (i) Mens rea (malafide/criminal intent - therefore, it is critical to evaluate the nature of non-compliance i.e. fraud as compared to negligence or inadvertent omission; and (ii) where the larger public interest is affected adversely."*[17]

This consultation paper concedes that almost all the offences under Chapter V of the 2009 Act are a fit case for decriminalization "since the violation may not necessarily involve mens rea (malafide/criminal intent) and may not adversely affect public interest at large." For example, labeling defects (spacing around net quantity, font height, not meeting the prescribed manner of MRP declaration etc.) which in no manner suppress material information relevant to consumers should not be subjected to criminal liability. Food Safety and Standards Act, 2006 which has a regulatory framework similar to the 2009 Act does not impose a criminal penalty for labeling defects either for the first or for the subsequent offence.

Converting offences under the 2009 Act from criminal to civil penalties will have certain added benefits. Firstly, it will reduce the load on an already overburdened criminal justice system in India that is witnessing undue delays in resolution of disputes. This will also save both the legal

[17] Consultation Paper on Proposal of Decriminalization of Legal Metrology Act, Department of Consumer Affairs, Government of India, 13 July 2020. See: 2009https://consumeraffairs.nic.in/latestnews/stakeholder-consultation-upto-1282020-proposal-decriminalization-legal-metrology-act-2009

metrology department and the entrepreneur valuable time and resources spent in contesting such criminal cases. The removal of the high burden of proof required in criminal cases to establish guilt beyond reasonable doubt will enable faster resolution of such disputes. With decriminalization, it may even be feasible to consider a system of dispute resolution under the 2009 Act akin to the virtual court for traffic challans[18] which has greatly improved the ease of living for citizens in several major cities of India.

[18]Shruthi Naik, *Cases Under the Legal Metrology Act and the Proposal to Decriminalise Offences*, DAKSH, 8 October 2020, See:
https://www.dakshindia.org/cases-under-the-legal-metrology-act-and-the-proposal-to-decriminalise-offences/

III. MULTIPLE CHANGES TO PACKAGING REGULATIONS

The Legal Metrology (Packages Commodities) Rules, 2011 under the 2009 Act ("2011 Packaging Rules") regulate the sale of pre-packaged commodities. Pre-packaged commodities are products with a pre-determined quantity, which are placed in a package without the consumer being present. The objective of the 2011 Packaging Rules is to ensure that customers who buy products sealed in a package have information about the contents prior to purchase.

The rules achieve this objective by setting out mandatory labeling requirements and they apply to all pre-packaged products. Pre-packaged commodities must have a number of mandatory declarations (name, net quantity, MRP, country of origin, address of manufacturer/ importer/ packer, consumer care details, use by date etc.) on the label of the package.

Need to Consolidate Multiple Packaging Regulations

The 2011 Packaging Rules are part of a larger web of packaging regulations issued by various ministries with respect to labeling requirements that businesses have to comply with (Bureau of Indian Standards Act, 2016, Food Safety and Standards Act, 2006 etc.). The multiplicity of these regulations and frequent changes in their requirements makes compliance difficult and increases the risk of violations for entrepreneurs. While the simplification of 2011 Packaging Rules is a long-term project, the government may consider streamlining the frequent labeling changes to which packaged commodities are subjected to, leading to avoidable complexity, wastage & cost.

Frequent amendments to labeling requirements also slows down the speed at which goods reach consumers, increases regulatory overload and adds to the cost of manufacturing. Further, there are regional inconsistencies as different states have different labeling requirements. By way of illustration, some states require the weight to be stated as "g" whereas others require it to state "gms".

The implementation of these frequent labelling changes mooted through various category specific laws such as Food Safety and Standards (Labelling and Display) Regulations, 2020, Drugs and Cosmetics Act, 1940, Cosmetic Rules 2020, Legal Metrology (Packaged Commodities) Rules, 2011, Plastic Waste Management (Second Amendment) Rules, 2022 (Rule 11(1)(a) & (b) related to labelling), and other Rules/Regulations remains an major compliance challenge.

For example, as per industry representations, between 2020 and 2022, there were 10 labeling amendments under only the Food Safety and Standards Act, 2006 and a total of 12 changes including Legal Metrology and Plastic Waste Management Rules. In 2022 alone, companies had to grapple with 9 changes to labeling regulations under FSSAI, Legal Metrology and Plastic Waste Management Rules. **Each change means that the full label has to be changed across the supply chain.**

As the Legal Metrology Packaged Commodity Rules are administered by the Department of Legal Metrology established under the Ministry of Consumer Affairs, the Ministry can play a pivotal role in streamlining frequent labelling changes to which packaged commodities are subjected to. Guidelines may be framed for notifying labelling changes for packaged commodities to streamline labelling requirements in a timely manner. A system can be put in place to **assimilate all the statutory/regulatory mandates from respective Ministries and Departments around labelling related changes and notify them twice a year on a pre-announced fixed date.** This is akin to the practice by the Department for Promotion of Industry and Internal Trade of announcing a consolidated FDI Policy that subsumes various press notes and reflects all relevant changes in the regulatory framework for foreign investment.

The simplification and clarity of the Consolidated FDI Policy Circular has been well appreciated by foreign investors. Initially the consolidated circulars were issued twice a year (typically in June and October)[19] to provide a one-stop resource incorporating all relevant changes for foreign investors. Eventually the frequency of these consolidated circulars reduced as the policy regime matured. They became annual circulars until 2017 thereafter the last such circular was released in 2020. Master Circulars issued by RBI and SEBI are issued along similar lines to consolidate the various guidelines/directions on a particular topic at one place. A similar consolidated policy for labeling changes will be transparent, predictable and will greatly improve the ease of doing business in India.

The status-quo is neither in the interest of entrepreneur nor in interest of the consumer. If there is any significantly important change that needs to be notified and cannot wait for the next cycle, the Government will always retain the prerogative to announce and implement the same with reasonable notice and as an exception to the guidelines. This will also address the issues faced by the entrepreneurs in implementing frequent labeling changes and undergoing avoidable hardships to implement labeling changes under different laws through multiple cycles thereby leading to more complexity and repeated time spent on multiple rounds of artwork changes. It will also reduce the wastage/write-off of packaging material and disruption in supply chain networks due to different compliance dates.

IV. COMPLEXITY OF PACKAGING REGULATIONS UNDER 2009 ACT

Information Overload on Product Labels

Currently, pre-packaged goods are required to make mandatory declarations and information as per the Act and Rules, category / sector specific legislations along with other voluntary information that the brands consider essential. The basic purpose of labeling is to provide information on brand identity, product description, and to assist the consumer in making an informed purchasing decision. However, currently product labels are overloaded with information, making it difficult to read and understand, especially for consumers. This reduces

[19] *Government to review FDI Policy soon*, Time of India, 25 December 2009, See: https://timesofindia.indiatimes.com/business/india-business/govt-to-review-fdi-policy-soon/articleshow/5375352.cms

the effectiveness of the communication, and often impairs one of the intents of law, i.e., raising product awareness through labeling.

The Department of Consumer Affairs has issued Legal Metrology (Packaged Commodities) (Second Amendment) Rules, 2022 in order to allow the electronic products to declare certain mandatory declarations through the QR Code for a period of one year, if not declared in the package itself.[20] Similarly, in August 2023, Drugs Control General of India (DCGI) has instituted a mechanism of essential declarations on QR code for the top 300 medicine brands[21]. As per the notification, the unique product identification code shall have proper and generic name of the drug; brand name; name and address of the manufacturer; batch number; date of manufacturing; date of expiry; and manufacturing license number.

The use of Quick Response (QR) code technology must be allowed even on other pre-packaged commodities so that product labels can be simplified and streamlined. Every pre-packaged commodity can carry on its label a QR code, which upon scanning can provide some of the declarations required for the product under the Rules as digital information. This can be done by drawing a distinction between the information/declaration that must be disclosed on the label at the time of purchase ("*need to know now*") and the declaration that can be disclosed later (*"need to know later"*). Thus, separating the information that must necessarily accompany the label and the information that is needed but which could be accessed off-label, i.e. through the QR Code.

QR Codes are small and occupy very little space on the product packaging. This can declutter the product label and help in making the "*need to know now"* information more prominent and legible. *Need to know later* information such as manufacturing addresses, consumer care numbers, etc., can be made available through the QR code, which can be accessed by a consumer off-label. The usage of QR codes on products will also minimize regulatory burden in case of any future amendments as the industry can adopt the notified changes early on.

Frivolous Notices and the Need to Institute a Mechanism of Improvement Notices

As explained above, the 2011 Packaging Rules prescribe declarations to be given on the product label and the precise format in which they must be printed. Notices under the 2009 Act are issued by legal metrology inspectors alleging violation of the 2011 Packaging Rules often on grounds of minor/technical non-compliance. Some examples of such grounds include:

- an alphabet is capitalized
- a word is abbreviated. For example, using "gms" instead of "grams"
- not mentioning of the word "net quantity"
- declaring MRP without decimal points. For example, using INR 140 instead of INR 140.00
- Minor deviation in the height of letters and numerals in respect of label declarations
- spacing around 'Net Quantity' is not as specified in the 2011 Rules.

[20]Notification dated 14 July 2022, Department of Consumer Affairs, Ministry of Consumer Affair, Food and Public Distribution

[21] Priyanka Sharma, *Bar codes must for top 300 medicines*, 31 July 2023, Livemint, See: livemint.com/news/india/bar-codes-must-for-top-300-medicines-11690824439111.html

These inadvertent lapses are tried stringently by the authorities thereby imposing undue hardship on the entrepreneur. Considering the volume of manufacturing activity in India and our aspirations to become a global manufacturing hub, we must revisit our enforcement approach to such minor errors which are in substantial compliance with the 2009 Act and 2011 Packaging Rules and do not mislead consumers or affect their interest. Technical errors and labeling defects are bound to occur in the ordinary course of business despite the best efforts of an entrepreneur. In respect of such minor offences, an opportunity should be given to the manufacturer to take corrective measures and improve their existing processes to remedy the non-compliance observed.

A similar provision and approach exists under section 32 of the Food Safety and Standards Act, 2006 read with Food Safety and Standards (Licensing and Registration of Food Business) Regulations 2011. The said provision enables the Food Safety Officer to provide an opportunity to the manufacturer to comply with the licensing conditions as per the improvement notice. Only the non-compliance of the improvement notice leads to enforcement action that may lead to civil penalties including suspension or cancellation of license. A similar regime of improvement notices must be incorporated into the 2009 Act at a suitable date.

V. CONCLUSION - NEXT STEPS

On the issue of decriminalization of offences, a pragmatic rationalization so that the degree and nature of punishment is commensurate with the severity of offence, has long been overdue. The Jan Vishwas Bill which has been passed by the Parliament in August 2023 is a great step in this direction because it decriminalizes several such provisions under the 2009 Act.

The government has constituted a working group to examine other acts and carry out an exercise similar to the Jan Vishwas Bill 2023[22]. We hope that this committee includes the decriminalization of section 30 (penalty for transactions in contravention of standard weight or measures), section 33 (penalty for use of unverified weight or measures) and section 36 (penalty for selling of non-standard packages) of the 2009 Act in its agenda.

Several major economies around the world (including UK, USA, Australia and Canada) have underscored the need to shift from an adversarial and prescriptive legal metrology framework to a more principle-based framework that is simpler and focused on compliance assistance. The Australian government's series of 2018-19 discussion papers on the review of their national legal metrology laws is one of the most comprehensive resources on the subject. It concludes, "A predominantly civil penalty regime may be more appropriate for the majority of offences under the measurement framework and fairer for offenders, as administrative and low level offences would no longer be criminalized."

Our analysis suggests that India should opt for a system of graded fines (for up to fourth offence, as suggested by some state governments) and remove provisions for imprisonment. In case we decide to keep some provisions on imprisonment, it should only be retained for extreme cases and repeated offences, in a way that consumer rights are adequately protected. International experience suggests that this is adequate punishment in developed countries.

We are not arguing for entirely doing away with criminal provisions but ensuring that, in light of international experience, there are sufficient safeguards that make it difficult to trigger excessively harsh penalties or imprisonment for most offences. For example, under Canada's Weights and Measures Act 1985 there is a due diligence defense which prevents conviction under the Act for almost all offences if a person can establish that they exercised due diligence to prevent the commission of the offence.

Secondly, on the issue of multiplicity and frequent changes of Labeling Regulations, an initiative to simplify the complex 2011 Packaging Rules must be undertaken. Meanwhile, a system should be put in place to consolidate all the statutory/regulatory mandates from respective Ministries and Departments around labeling related changes and notify them twice a year on a pre-announced fixed date, similar to the consolidated FDI Policy that is released by the government or Master Circulars issued by RBI and SEBI.

[22]PIB Press Release dated 2 August 2023. See: https://pib.gov.in/PressReleasePage.aspx?PRID=1945263

Thirdly, on the problem of frivolous notices, the authorities need to adopt a more flexible approach towards technical/minor errors which have no bearing on consumer interest and institute a mechanism of improvement notices to give enterprises an opportunity to rectify these errors before initiating enforcement action. It will also reduce the wastage/write-off of packaging material and disruption in supply chain networks due to different compliance dates.