

CRIMINAL LIABILITY OF COMPANY UNDER SPECIFIC STATUTES

I Introduction

APART FROM provisions under the Indian Penal Code 1861 there are many offences mainly of socio-economic nature, declared by some specific statutes which may be committed by companies as well. One special feature is that they contain a specific section which makes provisions relating to offences committed by companies. *E.g.*, section 278 B,¹ Income-tax Act 1961, in the first part provides that the company as well as any person who is responsible for conduct of its business are liable accordingly. The second part states that any director, manager, secretary or any officer of the company is also liable if the said offence is committed by his consent, knowledge or connivance. This pattern is to be found in almost all the statutes making provisions for offences except the Prevention of Food Adulteration Act 1954.

This Act makes marginal change in the pattern. Under section 17 a person appointed by the company is to be incharge of its affairs in so far as his duties will be to prevent adulteration. In case of an offence only this person and the company shall be liable. The second part of this section corresponds to provisions in the second part of section 278 B of the Income-tax Act. The other special feature of these statutes is that the general scheme of punishment is imprisonment and fine.

II Offences under select statutes

The general nature of the offence and consequent punishment can be better explained in a tabular form through three select statutes.

TABLE I

Monopoly and Restrictive Trade Practices Act 1969

<i>Sr. no.</i>	<i>Section</i>	<i>Nature of offence</i>	<i>Nature of punishment</i>
1.	45	Contravention of provisions of section 21 ²	Imprisonment or fine or both
2.	46	Contravention of the provisions of sections 22, 23, 24 or 27 ³	Imprisonment or fine or both

(Contd)

1. See, s. 56, Foreign Exchange Regulation Act 1973; s. 7, Essential Commodities Act 1955; s. 7, Prevention of Food Adulteration Act 1954; s. 39, Indian Electricity Act 1910 read with s. 379, Indian Penal Code.

2. This provides for the expansion of undertakings for which various conditions have been laid down.

3. S. 22 makes provision for establishment of new undertakings. S. 23 deals with merger, amalgamation and takeover, s. 24 with these in contravention of s. 23 and s. 27 with division of undertakings.

TABLE 1 (Contd.)

3.	47	Contravention of the provisions of section 25 ⁴	Fine only
4.	48	Failure to register agreement where the undertaking is owned by a company	Fine only
5.	48B	Acquisition or transfer of shares in contravention of sections 27B, 30B, 30C, 30D or 30E	Fine only
6.	48C	Contravention of order made by MRTP Commission relating to unfair trade practices	Imprisonment or fine or both
7.	49	Offences in relation to furnishing of information	Imprisonment or fine or both
8.	50	Offences in relation to orders under the Act	Imprisonment or fine or both
9.	51	Offences in relation to resale price maintenance	Imprisonment or fine or both
10.	52	Wrongful disclosure of information	Imprisonment or fine or both
11.	52A	Contravention of any condition or restriction, etc.	Fine only
12.	52B	Making false statement in application, return, etc.	Imprisonment and fine

TABLE II

Income-tax Act 1961

Sr. no.	Section	Nature of offence	Nature of punishment
1.	275A	Contravention of order under section 132(3) ⁵	Imprisonment and fine.
2.	276A	Failure to comply with provisions of section 178(1) and (3) ⁶	Imprisonment
3.	276A	Failure to comply with provisions of section 269AB or 269I ⁷	Imprisonment and fine
4.	276AB	Failure to comply with provisions of section 269UC, 269UE and 269UL ⁸	Imprisonment and fine

4. It lays down that the director general of undertakings to which this part (relating to offences and punishment) applies is not to be appointed in a similar capacity in other undertakings except with prior approval of the Central Government.

5. This states that the officer conducting or authorising the search and seizure may order that books of accounts, etc., shall not be removed by the person in possession thereof without prior permission.

6. S. 178(1) provides that where a person has been appointed a liquidator of a company, he shall give notice within one month to the income-tax officer concerned. S. 173(3) states that the liquidator shall not part with any assets or properties of the company without the leave of the commissioner.

Note: This offence cannot be committed by a company for obvious reasons.

7. S. 269 AB provides for registration of certain transactions. S. 269 I makes provision for transfer, surrender or vesting of property in the hands of the Central Government, by any person who has been ordered by the competent authority to do so.

8. S. 269 UC deals with restriction on transfer of immovable property, s. 269 UE

TABLE III

Drugs and Cosmetics Act 1940

<i>Sr. no.</i>	<i>Section</i>	<i>Nature of offence</i>	<i>Nature of punishment</i>
1.	13(1)	Violation of any of the provisions of chapter IV, or any rule made thereunder	Imprisonment or fine or both
2.	13(2)	Repetition of the above offence	As above. Double the period of imprisonment and double the amount of fine
3.	27(a)	(i) Manufacture for sale, sale, stocking or exhibition for sale or distribution of misbranded drugs under clauses (a) to (g) of section 17; or (ii) Manufacture, etc. (as above) without a valid licence	Imprisonment and fine
4.	27(b)	Any drug other than the drug referred to above in contravention of any of the provisions of chapter IV	Imprisonment or fine or both
5.	27A	Manufacture, etc., of any cosmetic in violation of chapter IV	Imprisonment or fine or both
6.	28	Contravention of the provisions of section 18A	Imprisonment or fine or both
7.	29	Using any report of a test or analysis made by the Central Drug Laboratory or by a government analyst, or any extract from such reports for the purpose of advertising any drug or cosmetic	Fine only
8.	30(i)	Having been convicted of an offence— (a) Under section 27(a) is again convicted of an offence under that clause (b) Under section 27(b) is again convicted under that clause	Imprisonment and fine Imprisonment or fine or both
9.	30(1A)	Having been convicted under section 27A is again convicted under that section	Imprisonment or fine or both
10.	30(2)	Having been convicted of an offence under section 29 is again convicted of an offence under the same section	Imprisonment or fine or both

with vesting or surrender of property in Central Government; and s. 269 *UL* with restriction on registration, etc., of documents in respect of transfer of immovable property.

III Consequences of commission of offence

Despite strict legislative policies in this area, at times companies or officers concerned go unpunished even after commission of the offence. The statutory provision in this respect is that the company is to be prosecuted along with the "person in charge" of its conduct. However the judicial approach in this area has often resulted in favouring the offender on the ground either that the 'person' was not an "officer incharge" or the officer incharge was not prosecuted as required by the Acts along with the company. In *I.T.O. v. Joseph*,⁹ a case under section 276B, Income-tax Act the company was prosecuted along with the managing director. It was held by the Kerala High Court that a managing director was not one of the officers falling under the category of principal officer enumerated under section 2(35) (a) or (b) of that Act. Therefore, neither the company nor the managing director was liable. This case was followed by the Allahabad High Court in *L. R. Cotton Mills v. S. K. Bhatnagar*.¹⁰ Here the income-tax officer filed a complaint against a company and its director under section 268 of the Act. The director was held not to be a principal officer and hence the company was not liable. It is difficult to agree with this line of reasoning. The core of reasoning in the above two cases is that a managing director or director is not a principal officer under section 2(35) (a) or (b) of the Income-tax Act, and therefore the company is criminally not liable. Objection can be raised on two grounds, viz., (i) the said officer can be covered under section 2(35) (b) which provides that any person connected with management or administration of the company is a principal officer; and (ii) section 278B of the Income-tax Act uses instead of the word "principal officer", the word "every person", who at the time the offence was committed, was in charge of, and responsible to, the company for the conduct of its business would be liable along with the company. A managing director or director is a person so responsible and therefore covered under the expression "every person". The offence mentioned under section 276 B was committed by the company, therefore, section 278B will apply. This is so because the latter section makes provision where an offence has been committed by the company. But the Kerala and Allahabad High Courts, instead of finding out the person responsible to the company with the help of this section simply adopted a stereotyped reasoning with the help of section 2(35) which has no bearing on the issue in question.

In *Kedia Vanaspati v. Andhra Pradesh*,¹¹ however, a director was held to be such a person for the purpose of section 49 A of the Indian Electricity Act. The facts were that the electricity bill in respect of the service connection was provided to the company on his request and understanding that

9. (1972) Tax L.R. 115 (Ker.).

10. (1975) 2 Cr.L.J. 1881 (All.).

11 (1981) 51 Comp Cas 389 (A P)

he would comply with the rules. These situations were, in the opinion of the court sufficient to hold that the director was a person incharge of the conduct of the company. Unfortunately the wider question as to the person to be identified with the company has been left ambiguous. The expression used in all these statutes is "every person who, at the time the offence was committed, was incharge of, and was responsible to, the company for the conduct of the business of the company, shall be liable with the company". The designation of officers of the company, *i.e.*, director, manager, secretary or other officer in the second part of the provision does not refer to the person in charge. These officers are specifically made liable if the offence is committed with their consent, knowledge or connivance. The person to be identified with the company will, therefore, have to be a person or persons incharge of and responsible for the conduct of its business. The above named may be one of such persons, but they would have to be found out by the court from case to case. The effect of these two decisions is that both the company and the officer would be set free in case it is found that the officer charged was not an 'officer incharge' or 'principal officer'.

IV Conclusion

It is submitted that merely because the prosecution chose a wrong person, the company, which is the real offender, should not be allowed to go unpunished. This would frustrate the whole legislative exercise to minimise economic offences. Another important factor contributing to the acquittal of the offending companies is the nature of punishment provided in most of the statutes excepting the Monopolies and Restrictive Trade Practices Act (MRTPA). In spite of the fact that a company as such has been specifically made liable for offences under the respective statutes, no serious attempt has been made in these statutes to provide for a punishment which could be imposed on corporate offenders as well. According to them the company on conviction would be liable to imprisonment and also fine. And the judiciary, in most of the cases, has taken the view that a corporation, not capable of being imprisoned, cannot be subjected to other punishment as well, where it is imprisonment and fine. This can be illustrated by a Calcutta High Court decision under section 276 B of the Income-tax Act which declares failure to deduct and pay income-tax an offence punishable with imprisonment and fine. The court held in *Adding Machines (India) Pvt. Ltd. v. State*¹²

12. (1988) 63 Comp. Cas 588 (Cal.).

that a company cannot be prosecuted as it cannot be committed to prison. It is, therefore, submitted that suitable provisions relating to mode of punishment be made on the pattern of MRTPA in other statutes also.

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