

**CHAPTER TWELVE**

**OFFENCES AND PENALTIES:  
SECTIONS 14 AND 15**

## **OFFENCES AND PENALTIES: SECTIONS 14 AND 15.**

### **12.1 The penal provisions**

Sections 14 and 15 of the Public Liability Insurance Act contain the principal penal provisions. Section 16 deal with offences by companies, while Section 17 deals with offences by Government departments.

### **12.2 Section 14: Penalty for contravention of Section 4 or directions under Section 12**

Section 14, as amended in 1992, punishes the following kinds of acts or omissions:-

- (i) contravention of Section 4(1);
- (ii) contravention of Section 4(2);
- (iii) contravention of Section 4(2A) or 4(2C);
- (iv) failure to comply with a direction issued under Section 12.

There is a minimum punishment of imprisonment of one year and six months and maximum of six years' imprisonment. Fine is not mandatory, but, if it is imposed, it cannot be less than one lakh rupees. Both the punishments can be combined.

It may be recalled, that Section 4(1) requires "owners" to take out insurance under the Act. Section 4(2) requires them to keep the insurance policies alive. Section 4(2A) and 4(2C) make certain other provisions. Section 12 gives power to the Central Government to give "such written directions in writing as it may deem fit of the purposes of this Act to any owner, or any person, officer, authority or agency". This power can be delegated by notification under Section 19 "to any person (including any officer, authority or other agency)". The result of this position is that a non-compliance with any direction issued either by the Central Government or by its delegate would become punishable with the minimum punishment of eighteen months or minimum fine of one lakh rupees under Section 14(1).

### **12.3 Comment of minimum punishment under Section 14(1)**

The provision in Section 14(1) as to minimum punishment appears to be open to comment. Failure to insure the "handling" of a hazardous substance may, at the first sight, appear to be a serious offence in every case. But a little analysis will show, that "handling" as defined in Section 2(c) includes a vast variety of activities-activities connected with the manufacture stage, activities connected with the intermediate stage and activities connected with the commercial stage. It does not appear to be correct to presume that all such acts will, in every situation, be so grave as to deserve the minimum punishment of 18 months' imprisonment or fine of Rs.1 lakh for failure to insure against their "hazard". "Handling" includes the following activities:-

- (i) manufacture;
- (ii) processing;
- (iii) treatment;
- (iv) package;
- (v) storage
- (vi) transportation by vehicle;
- (vii) use;
- (viii) collection;
- (ix) destruction;
- (x) conversion;
- (xi) offering for sale;
- (xii) transfer;
- (xiii) or the like.

The objection to minimum punishment becomes still stronger in respect of that part of Section 14(1) which punishes non-compliance with directions issued under Section 12. The power to issue directions as given by Section 12 is worded in very wide terms. The only limitation is that they must be "for the purposes of the Act". The purpose of the Public Liability Insurance Act, as described in the long title of the Act, is "to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident, occurring while handling any hazardous substance and for matters connected therewith or incidental thereto". These words can be construed narrowly or widely. On a narrow construction, the focus would be on public liability insurance in respect of hazardous substances. If so, no "directions" of a very important nature are needed and in any case, minimum punishment for their breach should not be necessary. On the other hand, if a wide construction is placed on Section 12, a certain element of flexibility must come in. Since it would not be correct to predict in advance that *all the directions* would be of such a nature that their breach will necessarily constitute a grave hazard, minimum punishment would not be appropriate.

A few words about the adjective "hazard" would also be in order. The Public Liability Insurance Act, in Section 2(d), refers us, when defining "hazardous", to the Environment (Protection) Act, 1986. In the Act of 1986, the definition of "hazardous" (stated in a compressed form) covers every substance which causes harm to the environment. "Environment" as defined in that Act, covers, *inter alia*, the total natural world and its relations with human beings. It is not necessary that the "harm" to the environment should be serious, in order that the substance may come to be regarded as "hazardous" for the purposes of the Environment (Protection) Act or (consequently) for the purposes of the Public Liability Insurance Act. That being the position, and taking into account the vast range of activities covered by the two Acts, there seems to be some justification for a re-consideration of Section 14(1),

in so far as it imposes a minimum punishment. It is also found that Section 14(1) does not give a power to the court to award a sentence below the minimum in fit cases. This seems to be a serious omission. Violations of the law may occur in myriad circumstances. It is not usually possible for the legislature to foresee the bewildering variety of circumstances in which, in future, a violation may come to be committed. The actual decision as to sentence should be left to depend on the facts of each case. That, in broad terms, is one of the reasons why the Code of Criminal Procedure, 1973 directs the convicting court to hear the accused (after conviction) on the question of sentence under Section 235(2) (for the Court of Session) and Section 248(2) (for Courts of Magistrates). As between the legislature and the judiciary, the latter has a better opportunity of viewing each case in the concrete, with all its attendant details.

#### 12.4 Section 14(2) : Second conviction

Section 14(2) provides that if a person, already convicted of an offence under sub-section (1) of Section 14, is convicted "for the second offence or any offence subsequent to a second offence", he shall be punishable with the minimum punishment specified in the section. The punishment is imprisonment for not less than two years and upto seven years and fine which shall not be less than one lakh rupees. From the language of the section, it follows that fine is also compulsory along with imprisonment. With the words referring to second offence (quoted above), one should obviously read a requirement that ;the second offence must be under Section 14(1).

#### 12.5 Section 14(3) : Probation

Section 14(3), in effect, excludes the benefit of probation for an offence "under this Act", unless such person is under 18 years of age. Two points arise out of this sub-section one of structure, the other of substance. Structurally, Section 14(3) forms part of Section 14; but the words "offence under this Act" would make the prohibition against probation applicable even to other offences under the Act, e.g. offence under Section 15. This does not appear to be the intention, as the offence under Section 15 is a very mild one, the punishment being imprisonment upto 3 months or fine upto ten thousand rupees or both. If this assumption is correct, Section 14(3) will require a slight verbal change to confine it to an offence under Section 14.

The point of substance arising out of Section 14(3) can be thus stated. To rule out probation *totally* for persons who have reached the age of 18 years, means that irrespective of the merits of the case, the convicting Magistrate will *never* be able to order release on probation. Probation does not mean total and unconditional dispensing with the sentence. The convicted offender, released on probation, is still subject to punishment, if he commits an offence during the period of probation. Release on probation does not mean dispensing with punishment *in toto*. It is only conditional suspension of punishment along with a statutory facility of supervision of the offender in the meantime. Probation took its birth because it was realised that imprisonment is not an unmixed blessing. There are many incarcerated individuals who should not have been sent to prison. Imprisonment is costly to the State and may sometimes be socially damaging to the convicted offender. Placing a

person on probation would save the State the expense and spare the individual the stigma, pain, disruption of family life and violation to self image that are the consequences attendant upon incarceration in prison. It should further be remembered that an order of release on probation is not granted as a matter of course, but is granted after a careful consideration of the nature of the offence, the antecedents of the offender and the circumstances in which the offence came to be committed. Such release is the result of a weighing of pros and cons. Probation as a concept is not the result of any undue "softness" towards the convict. It is the result of an awareness that in certain cases, the objectives of the criminal justice system can be more effectively realised by resort to probation, than by resort to imprisonment. Release on probation may, in many cases, be as much effective as imprisonment, to generate and sustain a motivation not to repeat the offence. The end of deterrence of the individual is still achieved, though by different means. Offences and offenders come before the court in a bewildering collection of manifestations in an incredible number of patterns, which cannot be classified in advance. It is desirable that a pre-set formula be avoided while prescribing punishment by legislation.

For these reasons, there appears to be a case for deleting Section 14(3).

#### **12.6 Section 15: Penalty for non-compliance with certain directions etc**

Section 15 punishes an "owner", for certain offences specified in the section. It will be convenient to enumerate them in the following form:-

- (i) failure to comply with a "direction" issued under Section 9;  
[Strictly speaking, what Section 9 contemplates is a *requisition* -note the word "require" ]
- (ii) failure to comply with an order under Section 11(2);  
[Strictly, it is an order under Section 11(2), *proviso*, to preserve certain hazardous substances found in the course of search ]
- (iii) obstructing a person in the discharge of his functions under Section 11(1) or Section 11(3) (entry and inspection, search and seizure etc.).

The punishment is imprisonment upto 3 months or fine upto 10,000 rupees or both.

Some verbal changes on the points mentioned above can be usefully made.