

CHAPTER THIRTEEN

**COMPANIES AND GOVERNMENT
DEPARTMENTS:
SECTIONS 16 AND 17**

COMPANIES AND GOVERNMENT DEPARTMENTS: SECTIONS 16-17

13.1 Section 16 : Offences by companies

Section 16 deals with the offences by "companies", which really means any body corporate and includes a firm or other association of individuals, by virtue of the Explanation to the section. The section incorporates a provision which has now become standardised and now forms part of almost all Central Acts. It is not proposed at this place to make any detailed comments on such provisions. It is enough to refer to certain important aspects of Section 16. The liability of a *company* for the wrongs of its officers is traditionally known as "vicarious liability". What Section 16(1) creates is, however, the liability of an officer for an offence committed by the company. It can be described as "reverse vicarious liability".

Two kinds of persons become criminally liable for an offence committed by a company. Under sub-section (1), every person who was directly in charge of, and responsible to the company of the conduct of its business is liable, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent commission of the offence. Secondly, under sub-section (2) etc. a director is criminally liable, if it is proved that the offence was committed with his consent or connivance or is attributable to any neglect on his part. It will be noticed that there is a difference between the two provisions. Under sub-section (1), the person in charge is *prima facie* liable and the burden is *on him* to prove his ignorance or diligence to prevent the offence. Under sub-section (2), the burden is on the *prosecution* to prove the consent, connivance or neglect of the director etc. sought to be made liable. At the same time, even under sub-section (1), it must first be established that the accused was directly in charge of, and responsible for, the conduct of the business of the company.

Finally, it needs to be stated that the reverse vicarious liability imposed on the officer etc. does not affect the criminal liability of the company itself. In fact, that is amply indicated by the language of Section 16(1) and Section 16(2), though it is often missed.

13.2 Section 16, Explanation (a): meaning of "company"

Clause (a) of the Explanation to Section 16 defines "company" as meaning a *body corporate* and as including a firm or other association of individuals. One should therefore examine what is meant by a "body corporate". The phrase is an English translation of the Latin phrase "corpus corporatum". The question is, what are the entities comprised within "body corporate"? Broadly speaking, a body vested with corporate personality is a body corporate. Such corporate personality in modern times is usually conferred by or under statute, and the general practice in modern Indian legislation is to provide that a certain body or association of persons shall be a body corporate, with perpetual succession and a common seal, with the

specified powers regarding property, contracts and suits. The best description of a corporation is to be found in the *Darbmouth College* case,¹ where it is, *inter alia*, pointed out that a corporation is an artificial person or legal entity created by or under the authority of the law of a State and the law treats the corporation itself as a person which can sue and be sued. In law, it is distinct from the individuals constituting it and subsists under a special denomination regarded in law as having a personality and existence distinct from that of its several members. It is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association within the scope of the powers and authorities conferred upon such bodies by law.

Applying these criteria, one can say that "body corporate" covers not only commercial corporations (such as companies), but also statutory corporations even if they are non-commercial, such as local authorities and universities—to mention a few examples. Whether this wide scope of the expression "body corporate" is brought to the notice of corporations which are not "companies" in the ordinary sense, is not known. But the point is of practical importance.

13.3 Section 16, Explanation (b) : meaning of "director"

Section 16, Explanation (b) provides that the expression "director", in relation to a firm, means a partner. However, in regard to corporate bodies which are not companies, the legislature has not provided any such definition. The result is, that the main part of Section 16(2), in so far as it applies to a "director" remains inoperative for such corporations. Of course, this does not affect the applicability of the rest of Section 16(2).

13.4 Section 17: Offences by Government Departments

One can now turn to Section 17. In its main paragraph, the section provides that when an offence under the Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Strictly speaking, the assumption that an offence can be "committed by any Department" is not legally accurate. In law, an offence can be committed only by a person, i.e. an entity having legal personality. In general, where there is no legal personality, there is no liability, civil or criminal. In fact, even in the Public Liability Insurance Act, Section 2(g), "owner" is defined as a "person" having ownership or control of the handling of hazardous substances. A Department of the Government cannot be regarded as a "person", since there is no constitutional or statutory provision that confers legal personality on a Department. It may be mentioned that when a civil suit is to be filed by or against the Government, the "Department" is never mentioned as the plaintiff or defendant.² Further, a "Department" consists of a vast retinue of officers and such a fluctuating body of individuals

1. *Darbmouth College v. Woodward*, 4 L. Ed/ 629, referred to in Black, *Law Dictionary* (1990), page 340.

2. Cf. Sections 76-79, Code of Civil Procedure, 1908.

cannot, in the first place, be said to have committed an "offence". Before an offence can be said to be committed, there must be an identifiable individual who has committed an act punishable by law.

13.5 Section 17: other points

There remain to be mentioned a few other points arising out of Section 17. The proviso to Section 17 enacts that nothing contained in the section shall render such Head of Department "liable to any punishment" if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission. What the proviso intends is, that he shall not be liable to *punishment provided in the Act*- a point which may be made clear on the lines of Section 16(1), proviso.

Incidentally, when Section 17, main paragraph provides that the Head of the Department shall be deemed to be guilty, it does not make it clear that the person charged must have been the Head of the Department *at the time when the offence was committed*.

Finally, it may be noted that officers other than the Head of the Department are not expressly referred to in Section 17. Here, it seems to follow the Central enactment relating to water pollution.¹ However, it may be useful to mention that both the Air Pollution Act² and the Environment (Protection) Act³ provide that where an offence is committed by a Department of the Government, then (apart from the Head of the Department), an officer with whose consent or connivance etc. the offence was committed or owing to whose neglect it was committed, shall also be criminally liable.

1. Section 48, Water etc. Act, 1974.
2. Section 41(2), Air Pollution etc. Act.
3. Section 17(2), Environment (protection) Act, 1986.