

**CHAPTER FOURTEEN**

**MISCELLANEOUS PROVISIONS :  
SECTIONS 18 AND 23**

## MISCELLANEOUS PROVISIONS : SECTIONS 18 TO 23

### 14.1 Section 18 : Cognizance of offences

The ordinary rule of criminal procedure in India is that the criminal court can take cognizance of an offence either upon police report or upon complaint made by any person or (in certain cases) on information otherwise reaching the court. However, this is subject to exceptions made by specific provisions contained either in the Code of Criminal Procedure, 1973 or in a special Act. Section 18 of the Public Liability Insurance Act falls in the latter category. In respect of offences under that Act- which is a special law- Section 18 prohibits the court from taking cognizance except upon complaint. Thus, taking cognizance on police report or on information received from any other source is excluded.

Further, under Section 18, the complaint must be made by the Central Government or any authority or officer authorised in this behalf by that Government or any person who has given the requisite notice. The authorisation by the Central Government is not required to be in writing, but obviously, writing is desirable.

Section 18(b), which relates to the required notice, provides that the complaint must be made by "any person who has given notice of the alleged offence and of his intention to make a complaint". A better phraseology would be "any person who has given notice of his intention to make a complaint of the alleged offence...."

### 14.2 Section 19: power to delegate

By Section 19, the Central Government can, by notification, delegate such of its powers and functions as it may deem necessary or expedient, except the power to make rules. The power seems to be rather wide because, even the power to give direction under Section 12 can be delegated. The delegation may be in favour of "any person" (including any officer, authority or other agency). This part of the section also appears to be rather wide. This will be apparent if one takes note of the range and variety of powers vested in the Central Government under the Act. Briefly, these are as under:-

Section 4(3)	Power to exempt any owner from the obligation to take out an insurance policy.
Section 9	Power to authorise any person to call for information.
Section 10	Power to authorise any person to enter and inspect any premises.
Section 11	Power to authorise any person to conduct search and seizure.

Section 12	Power to issue "such directions in writing as it may deem fit for the purposes of this Act".
Section 13(1)	Power to:- <ul style="list-style-type: none"> <li>(i) apply to court for injunction.</li> <li>(ii) authorise any person to make an application for injunction.</li> </ul>
Section 18	power- <ul style="list-style-type: none"> <li>(i) to make a complaint of an offence under the Act, or</li> <li>(ii) to authorise any person to make such complaint.</li> </ul>
Section 21	Power to constitute an Advisory Committee.
Section 23	Power to make rules. (However, this power of the Central Government cannot be delegated).

#### **14.3 Section 20: Protection of action taken in good faith**

Section 20 provides that no suit, prosecution or other legal proceeding shall lie against the Government or any officer, authority or other agency in respect of anything done or intended to be done in good faith in pursuance of the Act etc. Such protection clause can be subjected to a variety of comments; but no comment is being offered here, as this has become a standard clause in Central Acts.

#### **14.4 Section 21: Advisory Committee**

Section 21(1) gives power to the Central Government to constitute an Advisory Committee on matters relating to the insurance policy under the Act. Section 21(2) gives the composition. It appears to be desirable that the committee should have two representatives of the general public also, for whose ultimate benefit the legislation has been enacted.

#### **14.5 Section 22 : Effect of other laws**

Section 22 provides that the provisions of the Act "and any rules made thereunder" shall have effect notwithstanding anything inconsistent therewith contained in any other law. The overriding effect given to the rules seems to be rather an extreme provision. The section seems to have followed, in this regard, Section 24 of the Environment (Protection) Act, 1986. But such provisions are open to objection, since the overriding effect given to *the rules* would mean that the legislature is making an unduly excessive delegation.

Incidentally, clauses giving an overriding effect (i) either to the Act or (ii) to the Act and rules, are becoming now a familiar feature of Central Acts. In the very sphere of environmental law, such clauses are found in Section 60 of the Water Pollution Act, Section 52 of the Air Pollution Act and Section 24 of the Environment (Protection) Act. (The list is illustrative only). As a result, each of these Acts may override all the others-except that provisions like Section 8 of the Public Liability Insurance Act save rights to compensation under other laws.

**14.6 Section 23 : power to make rules**

Section 23 gives to the Central Government power to make rules to carry out the purposes of the Act. Offer the amendment of 1992 there is also a power to frame a scheme regarding the Relief Fund under Section 7A(3), *proviso*.