

9

OFFENCES : SECTIONS 15-17

9

OFFENCES : SECTION 15-17

9.1 *Sections 15-17: The Scheme.*

With section 15 of the Environment Protection Act being a group of sections whose focus is on providing criminal sanctions for various types of acts or omissions coming within the fold of the prohibitions imposed by or under the Act. The general penal provision is contained in section 15, which applies to all persons. The criminal liability of managerial personnel of firms, companies and associations is provided for, in section 16. The criminal liability of Heads of Government Departments is dealt with in section 17.

9.2 *Section 15(1): Failure of Contravention: Amendment needed*

Section 15 (as stated above) is the general penal provision applicable to all persons, as is made clear by the word "whoever" with which it begins. By section 15(1), failure to comply with or contravention of the following is made punishable:-

- (a) the Act,
- (b) the rules made under the Act,
- (c) orders issued under the Act,
- (d) directions issued under the Act,

Since failure to comply with the provision of the Act is made punishable, it would appear that an authority's failure to take remedial measures to prevent or mitigate environmental pollution under section 9 would also be punishable under section 15. One cannot say whether this was really the intention of those who drafted the law, but the result seems to be inescapable.¹

At the same time, the language of section 15(1), if taken literally, would not cover omissions of the type dealt with in sections 10(2) and 10(3). It may be mentioned that under the above-mentioned provisions, a person

¹ See also paragraph 11.1 *infra*.

who fails to give assistance in preventing or mitigating environmental pollution after an accident occurs or who wilfully obstructs etc. a person empowered by the Central Government to remedy such a situation "shall be guilty of an offence under this Act". But the question that arises is this-What is the punishment for the offence so created? Does it fall within section 15. What section 15 punishes, is a particular type of failure or contravention. Section 10(2) may arguably fall within section 15, because it first imposes an obligation to render assistance and then declares failure to be an offence. But section 11 directly creates an offence. It does not create an obligation. The obligation flows *indirectly*, from the fact that an offence is created. Section 15, in terms, does not apply to it. Hence it is desirable that the position be put beyond doubt by suitable amendment of section 15. There are several ways in which this can be achieved. One possible mode would be to insert in section 15 an Explanation below section 15(2) as under:-

"The provisions of this section apply also to a person who, by virtue of the provisions of sub-section (2) or sub-section (3) of section 10, is guilty of an offence."

9.3 *Section 15(2): Continued failure*

Section 15(2) punishes continued failure etc. beyond one year after conviction, the punishment this time being imprisonment upto seven years.

9.4 *Section 16: Offences by companies*

In the case of offences by companies, section 16, following the usual legislative practice, punishes certain officers of the company. As usual, the section provides that "company" means any body corporate and includes a firm or other association of individuals.

9.5 *Section 17(1): Offences by Government Departments: Need for amendment.*

Section 17(1) provides, in its main paragraph, that where an offence under the Environment Protection 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, in juristic theory, a "Department of Government" is not a legal person who can be regarded as having the legal quality of committing an offence. However, adopting a non-juristic approach, the legislature has considered it proper to make this provision. A provision of this nature has been inserted in a few other Central Acts also, during recent years. It may be worthwhile to point out that "Government" in section 17 (as,

indeed, in any provision of Central Act) means the Central Government as well as the State Government, by virtue of the general provision on the subject in the General Clauses Act. Hence the notional liability of Heads of Departments, created by section 17(1), is equally applicable to State Government Departmental Heads.

The proviso to Section 17(1) lays down that nothing in the section shall render such Heads of the Department "liable to punishment", if he proves that the offence was committed without his knowledge etc. It would be proper to suggest that after the words liable to "punishment", the words "provided in this Act" should be added. Compare section 16(1), proviso.

9.6 *Section 17(2): Offence committed with consent etc. of officer of Department: Need for clarification*

The Head of the Department is not the only person criminally liable. Section 17(2) (so far as is material) provides that where it is proved that an offence under the Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of "any officer other than the Head of the Department", such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Obviously, the "officer" contemplated here is an officer of the Department. Opportunity should be taken of making that clear.

9.7 *Comparison with the Public Liability Insurance Act*

Officers other than the Head of the Department are not expressly referred to, in section 17, Public Liability Insurance Act. That Act seems to follow, in this respect, the Central, enactment relating to water pollution.¹ However, 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.⁴

1 Section 48, Water etc. Act, 1974.

2 Section 41(2), Air Pollution etc. Act.

3 Section 17(2), Environment (Protection) Act, 1986.

4 See P.M. Bakshi, *Public Liability Insurance Act* (I.L.I.) (1992), page 61, para 13.5.

9.8 *Imputed liability: some general observations*

The liability created by section 16 (for officers of companies) and section 17 (for officers of Government Departments) is imputed liability. The offence committed by A is attributed to B and the latter made punishable for it. The question how far such imputation of liability ("transferred malice"--so to say), is justifiable in theory or workable in practice, is a general one. It is not, confined to the Environment Protection Act, But is common to all Central Acts where the insertion of such a provision has become a routine. It is not therefore proposed to discuss that question at this place.

9.9 *Position in certain other countries*

In some of the countries, an emphasis has been placed on measures other than criminal sanction for enforcing environment law. For example, in Japan, the emphasis is on compensation to victims through civil proceeding under Law No. 3 of 5th October, 1973 called Pollution related Health Damage Compensation Law. In the United States, the emphasis is on giving to the citizens the right of information and on provisions dealing with emergencies, mainly under a law called the Super Fund Amendment and Reauthorisation Act. Title III.

In France, compensation is already provided for, in the general procedural law. Besides this, in France, all registered associations with legal personality can join as civil parties before the criminal court and initiate public proceedings for violation.

In U.K. the prosecutions are rare and the regulatory authorities pursue a cooperative approach. They regard confrontation and strict law enforcement as inappropriate, except where the offence is calculated and deliberate. *The Royal Commission on Environmental Pollution in its 6th report (1976)* expressly supported this policy: it stated that "....an aggressive policy of confrontation involving prosecution for every lapse would destroy the basis of cooperation."