

UNIT 14

OFFENCES AND PENALTIES

14.1 Background

Aggregate Technical and Commercial losses(AT&C), are very high for Power utilities in India. The reason for the same are several including -

- Imp / Exp metering errors
- Technical losses (66 & 33KV)
- Technical losses (11 kV & below)
- Theft
- CT ratio/MF error
- Stop meter
- Slow meter
- Defective meter
- Meters not read
- Consumers not billed
- Unregistered consumers
- Bills not delivered
- Misuse of category
- Consumers billed but not credited
- Part payment
- Deliberate under billing
- Provisional billing
- Bills on a/c of old meter when changed
- Line disconnected consumer

This list for A& T losses may seem to be long, but many energy expert are of the opinion that Electricity theft is the main reason for such high T& D losses. Besides this it is also believed that disguised power theft is taking place at a large scale.

First Draft

To rectify the situation and to contain Power theft many Distribution Licensees have instituted One Time Amnesty¹schemas which has been implemented with Mixed results.

However it was known in the industry that strong anti theft legislation would be the right deterrent for reducing theft of electricity. Many state legislations were enacted which provided for strong anti theft laws. Some of the state legislation dealing with anti theft provisions are –

- The Indian Electricity (Gujarat) Amendment Act 2003
- The Madhya Pradesh Urja Adhiuniam 2001
- The Indian Electricity (Andhra Pradesh Amendment) Act 2003
- The Indian electricity(Maharashtra) Amendment Act, 2003
- Indian Electricity (Uttar Pradesh Amendment) Ordinance, 2001
- The Indian Electricity (West Bengal Amendment) Bill, 2001
- The electricity (Karnataka) Amendment Bill, 2001

However after the enactment of the Electricity Act 2003 the provisions in the state Act which are inconsistent with the Electricity Act are non Applicable and the provisions of the Electricity Act 2003 shall be valid for all practical purposes. The Electricity Act provides for stronger deterrent punishment to contain and reduce power theft and other offences relating to power industry . Part XIV of the Electricity Act deals with Offences and penalties.

14.2 Theft of Electricity

Section 135 defines theft of Electricity .To prove theft of electricity two elements must be present –

14.2.1 Mens Rea - Mental Element

¹ MSEB instituted" Sanman" Amnesty Scheme for domestic users and" Krishi Vikas" Amnesty Scheme for Agricultural Consumers. BSES YAMUNA and BSES RAJDHANI instituted " VDS(Voluntary Disclosure Scheme)" to contain power theft.

First Draft

Inclusion of the word "dishonestly " in section 135 means that the mental element must be present in the act .But it is commonly known that to prove the mental element in electricity theft is a daunting task because of the nature of business and the actual supply lines being within the premises of the consumers which is not easily accessible.

To ameliorate such a situation the proviso to sub Section (1) to section 135 provides that –

“if it is proved that any artificial means or means not authorized by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer”

There shall be presumption of the presence of dishonesty (mental element) if it is proved that that following things exist –

1. artificial means or
2. means not authorized by the Board or licensee

The word used in the proviso is "exist". This implies that whether the artificial means were being used or not by the consumer is irrelevant .Even if the artificial means exist , it will be presumed for the purpose of this act that there was dishonest intention on the part of the accused . It is not motioned in the act that whether the unauthorized means must be present within the premises or it can be any wear in or around the system from where the accused can abstract, consume or use electricity .

14.2.2 Actus rea – physical element

The second element will be satisfied if any of the following is proved – where any entity -

“(a) taps, makes or causes to be made any connection with overhead, under ground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper

First Draft

registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, so as to abstract or consume or use electricity”

14.3 Powers of officers authorized by the State Government

Following are the powers of the officer authorized by the state Government. He may -

- (a) *enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been, is being or is likely to be used unauthorized;*
- (b) *Search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, is being , or is likely to be, used for unauthorized use of electricity;*
- (c) *Examine or seize any books of account or documents which in his opinion shall be useful for or relevant to , any proceedings in respect of the offence under subsection (1) of section 135 and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.*

14.4 Rights of the consumer while authorized officer(s) exercising his powers

14.4.1 Right to remain present during Search² -The occupant of the place has a Right to remain present during the search operation. Any other person may also remain present during the search operation.

14.4.2 Right to receive list of things seized³ – The authorized officer shall prepare a list of things seized during the course of the search operation. The list will be delivered to the occupant , who shall sign the list.

² Section 135(3)

³ Section 135(3)

First Draft

14.4.3 Domestic places not to be inspected at night⁴ – No inspection, search and seizure of any domestic premises shall be carried out between sunset and sunrise except in the presence of adult male member occupying such premises.

The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Secti on	Offence	Punishment	
135	Theft of Electricity	Imprisonment for a term which may extend to three years or with fine or with both. Lode less than 10 KW	First conviction –Fine not less than three times the financial gains. Second and subsequent conviction –Fine not less than six times the financial gains .
		Lode more than 10KW	First conviction –Fine not less than three times the financial gains Second and subsequent conviction - imprisonment for a term not less than six months but which may extend to five year and with fine not less than six times the financial gain
136	Theft of Electric lines and materials	First Conviction Second or	May extent to three years or with fine or with both Imprisonment shall not be

⁴ Proviso to section 135(3)

First Draft

		subsequent conviction	less then six months but which may extent to five years and shall also be liable to fine which shall not be less then ten thousand rupee .
137	Punishment for receiving stolen property	imprisonment for a term which may extend to three years or with fine or with both	
138	Interference with meters or works of licensee	First Conviction	Imprisonment for a term which may extent to three years , or with fine which may extent to ten thousand rupees , or with both .
		Continuing offence	Daily fine which may extent to five hundred rupee
139	Negligently wasting Electricity or injuring work	Fine which may extent to ten thousand rupees	
140	Penalty for maliciously wasting electricity for injuring works	Fine which may extent to ten thousand rupees	
141	Extinguishing public lamps	Fine which may extent to two thousand rupees	
142	Non compliance of directions by Appropriate Commission	Penalty shall not exceed one lakh rupee for each contravention and in case of continuing failure with an additional penalty which may extent to six thousand rupee for every day during which the failure continues .	
145	Non compliance of orders and	First offence	Three months or

First Draft

directions
under the
Electricity Act
2003

Continuing offence

with fine which may
extend to Rs 1 lakh
Fine may extend to
Five thousand for
every day

14.5 Theft of electric lines and materials

To prove theft of electric lines and materials also it is necessary to prove intention of dishonesty .Second important point which is notable is that for the purpose of this section it is immaterial weather the purpose of theft was profit or some other purpose . Section 136 (1) of the Electricity Act states that -

“Whoever, dishonestly :-

- (a) *cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located, including during transportation, without the consent of the licensee or the owner, as the case may be, **whether or not the act is done for profit or gain**; or*
- (b) *Stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or*
- (c) *Loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain”*

Further more receiving of stolen property has also been made an offence and whoever dishonestly receives any stolen electric line or material knowing that the same is stolen property shall be punished under section 137 of the Act .

14.6 Interference with meters or works of licensee

Section 138 states that –

“Whoever

- (a) *unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects she same from any such electric; or*

First Draft

- (b) *unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or*
- (c) *lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee ; or*
- (d) *maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering,”*

Shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection , communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

Thereby the presence of mental element shall be presumed under the above mentioned cases unless it is proved by the accused that there was absence of mental element .

14.7 Wasting of Electricity

Section 139 and Section 140 of the Act deals with wasting of Electricity. Section 139 provides that whoever negligently causes electricity to be wasted , or diverted or negligently breaks , injures , throws down or damages any material connected with the supply of electricity would be guilty of negligently wasting of electricity or injuring electrical works .

Section 140 provides that whoever maliciously causes electricity to be wasted or diverted , or, with the intention to cut of the supply of electricity , cuts or injures , or attempts to cut of injure , any electric supply line or works , shall be guilty of maliciously wasting electricity or injuring works .

First Draft

The punishment for both the offences is fine which may extend to ten thousand rupee.

14.8 Extinguishing public lamps

Section 141 makes extinguishing of public lamps a offence .It is necessary to prove malice for conviction under this section . The section reads-

" Whoever, maliciously extinguishes any public lamp shall be punishable with fine which may extend to two thousand rupees "

14.9 Non compliance of Directions or orders

Section 139 provides that Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made there under, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence.

The provision is all encompassing and dose not limit itself to only this part of the Act .Therefore any order given by any authority within the preview of the Act shall fall within the this section. Wherever the act is silent on the issue of effect of non-compliance of order , this section shall be applicable.

14.10 Penalties not to affect other liabilities

All penalties imposed will be in addition to and not a substitute of the actual compensation or the due amount which has to be recovered. Further more the government institutions have to also comply with the provisions of this act and they can not be exempted

First Draft

14.11 Lifting of Corporate Vail

By virtue of section 149 where acts are committed by the company , whoever was the in charge of the company will be proceeded against. However if the person proves that the act was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence, then such person shall not be liable for the same .

14.12 Abetment

Whoever abets an offence punishable under this Act, shall notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence. And the employees of the utility are also included within the ambit of the definition.

14.13 Cognizance of offences

The Court shall not take cognizance of any offence under this act unless a complaint is filed in writing-

- Appropriate Government or
- Appropriate Commission or
- any of their officer authorized by them or
- a Chief Electrical Inspector or
- an Electrical Inspector or
- licensee or
- the generating company,

14.14 Compounding of offences

Only two entities can compound an offence

- the Appropriate Government
- or any officer authorized by it in this behalf

The *Code of Criminal Procedure 1973*, shall not have application for compounding of offence .

TABLE

Nature of Service	Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/Horse Power (HP) or part thereof for Low Tension (LT) Supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)
(1)	(2)
1. Industrial Service 2. Commercial Service 3. Agricultural Service 4. Other Services	Twenty thousand rupees; Ten thousand Rupees; Two thousand Rupees; Four thousand rupees;

It is mandated that on payment of the sum of money in accordance with the compounding of offence any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court. The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the *Code of Criminal Procedure, 1973*. However compounding of an offence under sub-section shall be allowed only once for any person or consumer .

14.15 Power of appropriate Commission to impose penalty⁵

The CERC and SERCs as the regulators of the electricity sector in India are entrusted with wide powers to regulate and develop the Electricity market in India . These powers are exercised by the appropriate commissions by issuing of directions to the appropriate entities. To maintain the sanctity of the regulatory authority and to provide a remedy in case of non-compliance of direction of the regulating authority it was felt necessary that certain powers to impose penalty must be entrusted to them.

⁵ Section 142

First Draft

If the appropriate commission is sue moto or against the complaint of any person is satisfied that any person has contravened the direction of the commission .Then the commission after giving the person who has contravened the orders an opportunity to be heard direct in writing that such person pay the penalty . The penalty shall not exceed one lakh rupee .It is also provided that such penalty shall be in addition to any other penalty which the contravening party may be required to pay . Further more it is also mandated that in case of continuing non – compliance of the direction an additional penalty may be imposed which may extend to six thousand rupee every day during which the failure continues after contravention of first such direction .

14.15 Conclusion

Only strong laws can not reduce theft of electricity. An intelligent licensee needs to proactively search for a healthy mix of new technology and strong implementation of the law to get good results. Technology such as Plastic Coated Cables will put an end to Large Scale hooking and illegal tapping of Electricity and this will also enhance public safety as there are no naked live wires in the open⁶.

⁶ NDPL has already launched the project in low-middle class and resettlement colonies of the Capital.