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ENERGY THEFT AND LIABILITIES UNDER INDIAN LAW

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ABSTRACT

Theft of electricity is now a frequent problem in developing nations. It accounts for the lion's share of non-technical losses. Non-technical losses are those that the power system experiences as a result of external acts. The quality of the electricity that is supplied suffers as a result. Electricity theft typically refers to the unlawful act of stealing electricity. The Electricity Act of 2003 makes theft of electricity a crime with associated penalties. There are numerous other causes for transmission and commercial electricity losses, but the theft of electricity is the primary cause. Many states have taken steps to stop energy theft by passing strict legislation that impose penalties for certain behaviours that qualify as theft of electricity. In India, electricity theft is a major issue. The Electricity Act of 2003 was passed to control and prevent electricity theft. It offers a dissuasive penalty to reduce the incidence of energy theft and other crimes involving the power sector. Penalties and offences are covered in Part XIV of the Act.

Keywords: *Energy theft, Penalties and offences, Electricity Act, Indian law*

INTRODUCTION

Theft of electricity is a real issue that is getting worse all over the world. Theft is primarily prevalent in emerging and underdeveloped nations, particularly in many African and South Asian nations. In most poor nations, electricity theft is a serious issue that costs billions of dollars annually. In the end, it has an impact on the customers who are allowed to use the energy. At the end of the day, they are the ones who suffer the loss, and social justice is also severely harmed. Moreover, it influences investment choices, hinders economic expansion, and ultimately jeopardises the future of entire countries.

An investigation by Northeast Group found that the Indian electricity sector loses \$16.2 billion to theft annually. According to the Northeast group's head, "Power theft costs India more money than any other nation in the globe. Mumbai is part of Maharashtra, which suffers

a yearly loss of \$2.8 billion. Total transmission and distribution losses nationwide are at 23%, and they could even reach 50% in some states. In India, electricity theft is a widespread problem in both urban and rural areas. The Times of India frequently reported that slum areas are where electricity theft is most common. The theft of power has also hurt India's GDP. The World Bank estimates that electricity theft has caused a 1.5% decline in India's GDP.

The Electricity Act of 2003 (hereafter referred to as "the Act"), under Part XIV, lists the offences that have been or may be committed in the electricity industry. Offenders may commit a variety of offences, including stealing electricity, interfering with electric metres, stealing materials for electric lines, etc. The statute states that stealing power may be accomplished using a variety of techniques, which we will explain in this essay. The Act also establishes Extraordinary courts to serve as redressal systems. In order to hear the complaints of people and businesses who have been harmed by any of the offences listed in Sections 135 to 140 and 150 of the Act, special courts have been formed. Furthermore, police personnel have been given all the authority described in Chapter XII of the "Code of Criminal Procedure, 1973" for the purpose of investigating an offence punishable under the Act (CrPC).

LITERATURE REVIEW

1. Electricity theft: A prime concern by Mohammed Irshad (2019)

In the majority of developing nations, electricity theft is a serious issue that occurs every year. In the end, it has an impact on the customers who are allowed to use the energy. At the end of the day, they are the ones who suffer the loss, and social justice is also severely harmed. Moreover, it influences investment choices, hinders economic expansion, and ultimately jeopardises the future of entire countries.

2. Offences, Penalties & Defences under the electricity act by Prashant Kanha (2022)

The Electricity Act of 2003 (hereafter referred to as "the Act"), under Part XIV, lists the offences that have been or may be committed in the electricity industry. Offenders may commit a variety of offences, including stealing electricity, interfering with electric metres, stealing materials for electric lines, etc. The statute states that stealing power may be accomplished using a variety of techniques, which we will explain in this essay.

3. Electricity theft: Legal provisions in India by Muskan Chhabra (2021)

Non-technical losses are those that the power system experiences as a result of external acts. The quality of the electricity that is supplied suffers as a result. Electricity theft typically

refers to the unlawful act of stealing electricity. The Electricity Act of 2003 makes theft of electricity a crime with associated penalties.

4. *Punishments for electricity theft in India by Richa Goel (2019)*

There are numerous other causes for transmission and commercial electricity losses, but theft or the theft of electricity is the primary cause. Many states have taken steps to stop energy theft by passing strict legislation that impose penalties for certain behaviours that qualify as theft of electricity. In India, electricity theft is a major issue. The Electricity Act of 2003 was passed to control and prevent electricity theft. It offers a dissuasive penalty to reduce the incidence of energy theft and other crimes involving the power sector. Penalties and offences are covered in Part XIV of the Act.

RESEARCH OBJECTIVES

- To understand what is energy theft
- To analyse the offences and penalties imposed on the person who is liable for committing the particular offence.
- To understand the various concerns in India of electricity theft

RESEARCH QUESTIONS

- How to analyse what amounts to electricity theft in India?
- How to determine whether the offence of energy theft has been committed under The Electricity Act, 2003?
- How to determine the amount of penalty imposed on the person committing the offence of electricity theft?

RESEARCH METHODOLOGY

These goals were the focus of the methodology. In order to accomplish this, we must continuously work to solve the issue; else, we will reach a moment where we will only have a small amount of electricity to use, if any at all. We will look into The Electricity Act of 2003 which was passed to control and prevent electricity theft. It offers a dissuasive penalty to reduce the incidence of energy theft and other crimes involving the power sector. Penalties and offences are covered in Part XIV of the Act.

WHAT IS ELECTRICITY THEFT?

The unlawful act of stealing electricity is known as electricity theft. Meter tampering, unauthorised connections (bypassing metre connections), physical destruction of energy metres, stopping the rotation of energy metres' discs, and storing units by the metre reader are all examples of deceptive energy theft methods. Cases of energy theft occur in most parts of the world. Electricity theft is the unlawful act of stealing electricity. It is a crime that carries a fine or imprisonment as a penalty. It relates to losses that are not technological. Losses resulting from behaviour outside the power system are referred to as non-technical losses. It includes failing to pay a bill, making a mistake when documenting or accounting, and stealing electricity.

WHAT AMOUNTS TO THEFT OF ELECTRICITY?

This provision states that anyone who steals power by tapping the lines, breaking the metre, interfering with the metre, or using the electricity in an unauthorised manner is guilty of theft. Two components must be proven in order for someone to be held accountable under this section:

- Mental intent (Mens rea): When the word "dishonesty" is used in the section, the conduct must be performed with mala fide purpose. Nonetheless, it is particularly challenging to demonstrate because the occupier's premises include the real supply of lines. According to Section 135, it is considered that someone has acted dishonestly whenever an artificial method or another unauthorised way is employed to obtain power.
- Actus reus: A physical act is required because the clause stated the "act" that would constitute an electricity theft.

CONCERNS IN INDIA

It is crucial to remember that consumers in India do not take their access to energy for granted. Power is unquestionably vital to Indians, as seen by the numerous vicious attacks on inspectors from electric companies in an effort to avoid paying their electrical bills. The widespread tampering with metres to decrease the reading and so avoid paying a larger amount is another fact that we should face. According to Bloomberg estimates, the economy as a whole lost \$ 17 billion in revenue each year due to electricity theft alone. This staggering amount speaks to the economic threat that electricity theft poses.

Resources are scarce, yet needs are countless. This is the fundamental issue with scarcity. Applying the same idea to our situation, we should never forget that electrical energy is a limited resource and that human needs are insatiable, making its conservation a top priority. If we examine the widespread practise of energy theft, we must acknowledge that the majority of the theft occurs during the transmission and distribution process. Power theft is a major issue facing our society as a whole right now. People are stealing by attaching magnets to electromagnetic energy metres or by attaching a simple circuit that produces electromagnetic rays, which prevents the electronic energy metre from functioning normally. However, some people even attempt to break the seals on energy metres in order to make circuited connections that will lower their electricity bills.

Before the Electricity Act of 2003, the laws governing the electricity industry were the Indian Electricity Act of 1910, the Electricity (Supply) Act of 1948, and the Electricity Regulatory Commission Act of 1998.

OFFENCES AND PENALTIES

1. THEFT OF ELECTRICITY

Electricity theft is defined in detail in Section 135 along with the behaviours that would constitute theft. Anybody who fraudulently connects to or taps any overhead, underground, or undersea line, cable, service line, or facility of a licensee in order to take, use, or consume energy is deemed to have committed the crime of "theft of electricity." Electricity theft is a crime that can be committed by anyone who tampers with an electric metre, utilises a tampered metre, or employs any other device or method that prevents proper metering of electric current for personal or business advantage.

Theft of electricity is also considered to have been committed by anyone who destroys or breaks an electric metre, uses electricity through a manipulated metre, or utilises electricity for any other use than that for which it was authorised.

According to Section 135, anyone found guilty of stealing electricity faces up to three years in prison, a fine, or both¹. It was determined in the case of *JTG Alloys Pvt. Ltd. Mandi Govindgarh v. Punjab State Power Corporation*² that "theft of power" was distinct from

¹ Section 135, The Electricity Act, 2003 (36 Of 2003)

² *JTG Alloys Pvt. Ltd. Mandi Govindgarh v. Punjab State Power Corporation*, AIR 2014 (NOC) 58 P&H

"unauthorised usage of electricity," in which there was no right of appeal. The former incorporates a dishonest intention component.

Punishment on account of quantity extracted

If the illegally obtained load is less than 10KW, the first offence penalties must be at least three times the profit made from the power theft. If found guilty again, a fine of at least six times the profit will be assessed.

If the extracted load is greater than 10 KW, the first offence penalties cannot be greater than three times the profit. If you are convicted again, you face a minimum jail sentence of six months and a maximum sentence of five years, as well as a fine that is at least six times what you made. Also, for at least three months, such a person will not be permitted to obtain power from any source (can extend up to two years depending upon the gravity of the offence).

It will be assumed that any artificial means employed by the consumer to abstract, consume, or use electricity were used dishonestly by the consumer if it can be demonstrated that they were not authorised by the Board, the licensee, or the supplier (unless it can be shown otherwise). The onus of proof rests with the consumer.³

According to *Jagannath Singh v. B.S. Ramaswamy*⁴, Rule 56(2) of the "Indian Electricity Regulations, 1956" mandates that the consumer employ "all reasonable means" at his disposal to guarantee that the metre seal is intact (otherwise than by supplier). If a seal is broken in violation of Rule 56, even the consumer who did not break the seal is subject to punishment under Rule 138, which carries a fine, unless the consumer can demonstrate that he took all reasonable precautions to prevent the seal from being broken. In this case, the SC also established a standard for sophisticated methods of dishonest abstraction, according to which:

- Consumer tampering must be proven
- For tampering to enable theft or pilferage on its own, it must have a "functional nature."
- It should be possible for tampering to prevent the accurate recording of electricity consumption.
- Proof must unambiguously demonstrate the consumer's dishonest abstraction.

³ K.K Mitra, Commentaries on the Electricity Act, 2003

⁴ Jagannath Singh v. B.S. Ramaswamy, AIR 1966 SC 849

In *Santaben Ranchhodbhi Patel v. GUVNL*⁵, the court decided that theft of energy was not established if laboratory tests revealed that the seal was broken by "rusting" but no evidence of tampering was present.

Dishonest Abstraction of Electricity

In *Ram Chandra Prasad. v. State of Bihar*⁶, the Court determined that merely alleging that a metre had been tampered with and was in the accused's possession was insufficient. Moreover, proof of "dishonest abstraction" of energy through artificial means was required in order to support a prosecution presumption.

Unauthorised reconnection to the main

In *Sajeetha Begum v. Tamil Nadu Electricity Board*⁷, the power was cut off because the consumption costs were unpaid. A violation of Section 135 was committed when it was discovered that the service connection had been improperly reconnected to the main, and an extra levy was applied while the matter was under provisional assessment. As a result, the consumer submitted a writ petition. The competent authority should receive consumer objections to interim assessments, it was decided. In addition, the court authorised the restoration of the power supply, subject to the petition's outcome. The conclusion that drawing power from the main line without permission or authorization needed to be discouraged led to the justification of increasing the fine.

A licensee should disconnect supply upon detecting theft

Any licensee or provider should immediately cut off energy supplies when electricity theft is discovered. Electricity supply can only be cut off by an officer of the licensee or supplier business who has been given permission by the relevant authority. After that, within twenty-four hours of being disconnected, the officer is required to file a written report about an offence at the closest police station with authority. Also, such licensee firm officer must resume supply within 48 hours of depositing the assessed amount of electricity charges.

Authorised officer to inspect and seize

If authorised officers of licensee firms have "reason to think" that illegal electrical use is taking place at a particular site or premises, they are authorised to search, confiscate, or break open

⁵ Santaben Ranchhodbhi Patel v. GUVNL, AIR 2013 (NOC) 1236 Guj

⁶ Ram Chandra Prasad. v. State of Bihar, AIR 1967 SC 349; 1966 (3) SCR 517; 1967 Cri.L.J. 409

⁷ Sajeetha Begum v. Tamil Nadu Electricity Board, AIR 2013 (NOC) 287 Mad.

any property or premises and examine any books of accounts. A list of all objects seized during the search should be given to the owner of the property (or somebody appointed on his behalf), who must be present throughout the search. In order to do this, searches carried out in accordance with the Act shall be subject to the search and seizure provisions of the CrPC.

According to the ruling in *M.A. Rashid v. State of Kerala*⁸, the phrase "cause to believe" has been interpreted by the judiciary to signify an honest application of mind to the facts and circumstances of the case and the relevant legal standards.

The Supreme Court ruled in the case of *H. Anurag v. Govt. of Tamil Nadu*⁹ that even an immaterial thing like electricity can be considered a "good."

According to the ruling in *Jagannath Singh v. B.S. Ramaswamy*¹⁰, it is the prosecution's responsibility to prove theft. Electricity is the "subject" of theft, not any physical object, hence the proof will nearly always be circumstantial in nature.

Theft of electricity as cognizable offence

In *Chhabi Rani Ghosh v. CESC Ltd*¹¹, it was decided that because an offence under Section 135 carries a three-year sentence, it must be considered a cognizable offence. As a result, the police are required to file a FIR as soon as they get information. Also, it was decided that police authorities should only assist authorised officials in the exercise of their authority in the absence of a warrant from the magistrate.

Disconnection without notice to the consumer

The electricity supply should not be disconnected by the board, without a notice to consumer. Electricity supply cannot be disconnected on allegations that consumer had committed theft, where the same is denied. If allegations are true or not have to be decided by appropriate proceedings. The SC also held that it is pertinent to serve notice on the concerned party before discontinuing supply.

1. THEFT OF ELECTRIC LINES AND MATERIALS

Regardless of whether the theft of electric wires and materials is done for personal gain, there are prohibitions in Section 136 of the Act that apply. Without the licensee's permission, anyone

⁸ M.A. Rashid v. State of Kerala, AIR 1974 SC 2249

⁹ H. Anurag v. Govt. of Tamil Nadu, AIR 1986 SC 63

¹⁰ Jagannath Singh v. B.S. Ramaswamy, AIR 1966 SC 849

¹¹ Chhabi Rani Ghosh v. CESC Ltd, AIR 2006 NOC 171 (Cal).

who dishonestly cuts, removes, takes away, or transfers any electric line or metre from a tower, pole, other installation, or site where it may be lawfully stored (including during transportation), has committed the crime of theft of electric lines and materials.

Unauthorized storage or possession of any electric line, material, or metre is a violation of Section 136 of the Electricity Act. Similar to this, violating Section 136 of the EA is anyone who loads, carries, or moves any electric wire, metre, or material without the owner's permission.

Anyone found guilty of stealing electrical wires and materials faces a maximum sentence of three years in prison, a fine, or both. Anyone found guilty of stealing electrical wires and materials a second time faces a minimum jail sentence of six months and a maximum sentence of five years, as well as a fine of at least ten thousand rupees.

2. PUNISHMENT FOR RECEIVING STOLEN PROPERTY

Any person who dishonestly receives any stolen electric line or material, knowing or having cause to suspect that it is stolen property, will be subject to a fine, a simple or hard jail sentence that can last up to three years, or both.

3. NEGLIGENCE BREAKING OR DAMAGING WORKS

Negligence is the failure to exercise the proper care and protections, which are either required by law or are just a matter of common sense. Thus, a punitive compensation of up to ten thousand rupees is due to anyone who negligently damages any property related to the supply of power.

Persons to be tried by Special courts

Trials in Extraordinary Courts are required for anyone accused of the offences listed above under Sections 135 to 139. Civil culpability is unrelated to the imposition of penalty under Section 135 (levy of charges for unauthorised use of electricity).

4. INTERFERE WITH METERS OR WORKS OF LICENCEES

In Section 2(77) of the Act, the term "Works" is defined. So, any electric line, building, plant, machinery, apparatus, or other item of any kind needed to transmit, distribute, or deliver energy to the public and to carry out the license's stated objectives is considered a job. According to the legislation, anyone who tampers with a licensee's metres or other work is subject to punishment. The nuances of this crime are covered in full below.

The crime of "interference with metres or works of licensees" is committed by anybody who unlawfully connects or disconnects any metre, indicator, or device with any electric line via which electricity is provided. Any person who unlawfully reconnects any metre, indicator, or equipment with any electric line or other works that are the licensee's property after the said electric line has been disconnected has violated section 138 of the penal code. A violation of Section 138 has also been committed by anyone who connects or connects any works in order to communicate with any other works owned by the licensee, or who will fully damages or fraudulently changes the index of any metre, indicator, or apparatus to prevent it from properly registering.

Any person found guilty of this crime faces a sentence of up to three years in prison, a fine of up to 10,000 rupees, or both. For a continuing offence (an offence that occurs daily), a daily fine of 500 rupees is imposed. A continuing offence is one that happens every day and has the potential to continue, according to the Supreme Court's definition in *State of Bihar v. Deokaran Nanshi*¹²

Customers must take the necessary procedures to protect the security and safety of their metres and indicators. In *Gujarat Microwax Ltd. v. Chief Engineer, Uttar Gujarat Vij Co. Ltd.*¹³, it was decided that officers could not afterwards assert that they might detect fraud if an inspection revealed undamaged seals at the petitioner company's facilities.

5. PENALTY FOR INTENTIONALLY INJURING WORKS

A punitive compensation of up to ten thousand rupees may be awarded to anyone who intentionally damages or interrupts any electric supply or works with the aim to do so. After reviewing the Act's criminal offences, it is clear that there are no provisions for the person who caused the harm to make restitution or repairs or for the recovery of any costs from him.

6. ABETMENT

The Indian Criminal Code defines aiding and abetting as an offence. Anybody who aids in the commission of an offence is subject to punishment in line with the offense's specified punishment (subject to relevant IPC provisions). Abettor must be proven to have actively assisted the commission of the crime in order for their actions to be considered abetment.

¹² State of Bihar v. Deokaran Nanshi, AIR 1973 SC 908

¹³ Gujarat Microwax Ltd. v. Chief Engineer, Uttar Gujarat Vij Co. Ltd, AIR 2013 NOC 394 (Guj)

Moreover, accusations of abetment would not surface if prima facie at the earliest phases, there is no case produced against the accused. If any officer, other employee of the Board, or licensee enters into an agreement to do, refrains from doing, permits, conceals, or conspires at any act or thing whereby any theft of electricity is committed, such officer is liable to be punished with imprisonment for a term that can extend up to three years, or with fines. But the Act makes no mention of the size of such a fine.

Section 150's third proviso begins with a non-obstruction clause. Any licence, certificate of competency, or permit issued pursuant to the rules made under this Act to a person who, while acting as an electrical contractor, supervisor, or worker, aids or abets the commission of an offence punishable under subsection (1) of Section 135, subsection (1) of Section 136, subsection (1) of Section 137, or subsection (1) of Section 138, shall, upon conviction for such aid or abettor, be revoked. Furthermore, in accordance with the principles of natural justice, no decision of cancellation of a permission or licence may be imposed without providing the affected party with a chance to be heard.

DEEN DAYAL UPADHAYA GRAM JYOTI YOGANA

Understanding DDUGJY in the context of India's electrical spectrum is crucial. It is a brand-new project that the Indian government launched in 2015. The very reason for starting such a plan was based on several concerns for the future, like the rise in energy demand, the outdated traditional method used for power generation, etc. And the plan intends to fundamentally alter how we think about electricity. This program's main goal is to provide every family in the nation with access to power, as well as to sub-transmit and distribute electricity in rural areas. It also aspires to create efficient metering systems to lower power losses and guarantee continuous power supply to panchayats, hospitals, schools, and other facilities.

In the end, all efforts made as part of the scheme can be linked to lowering India's rate of power theft. So the lack of electricity and its availability are the main causes of power theft in our nation. And the goal of this plan is to resolve the aforementioned issue.

CONCLUSION

Several customary methods of obtaining energy dishonestly or interrupting its supply have been designated as crimes subject to punishment under the Act. The courts have recognised certain offences under section 135 as being cognizable, such as stealing electricity (through various media). This gives the police and the administration the necessary authority to file a FIR and begin an investigation.

Any judicial proceeding can be time-consuming and stressful. Extraordinary Courts (tribunals) have been established across the nation as a result. The goal is to fairly and promptly assess the complaints of those people or businesses who have been affected by the

commission of such offences (without having to go through the hassles of moving the district courts or High Courts, which are already burdened with pending matters). In the event that the Special Court's rulings are disagreed with, the Supreme Court continues to serve as the last appellate court.

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