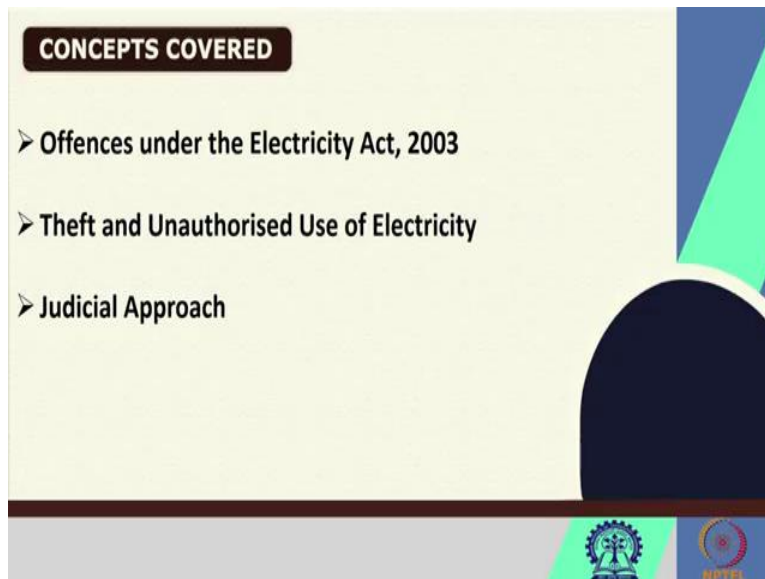


Introduction to Law on Electricity
Professor Uday Shankar
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Indian Institute of Technology Kharagpur
Lecture 26
Offenses Under the Electricity Act

Welcome to all the learners. We have studied about the provisions related to the production of the interest of consumers under the Electricity Act. We have also looked at what are the rights of the consumers and particularly, we have given a glance on 2020 rules wherein progressive provisions have been incorporated for furthering the interest of the consumers. Now, after that, let us now look at that how the Electricity Act 2003 covers, how it identifies certain activities of consumers as wrongful doing and brings it within the umbrella of offenses under the Act.

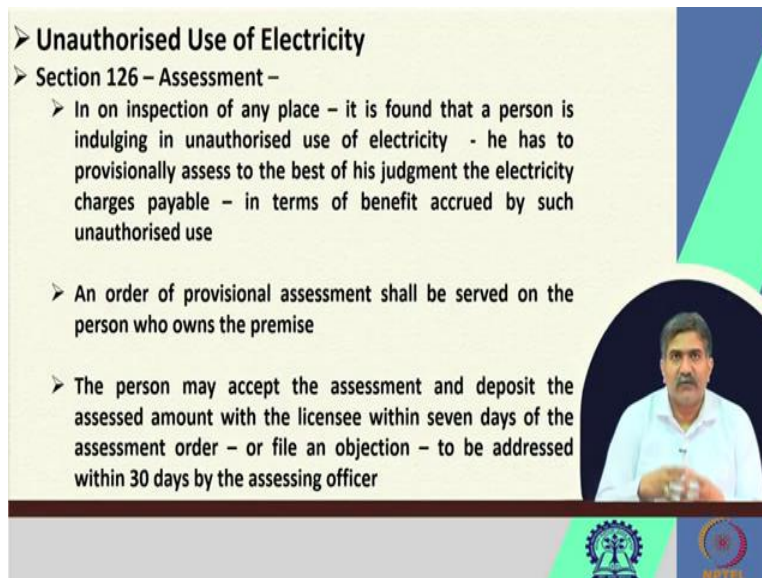
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So, this is what we would be studying today. We would be covering these concepts today that what are the offenses. Particularly, we will highlight on the offenses which are related to the activities of consumers. We will not touch upon the issues wherein the wrongful action is identified by the licensees, by the companies, that we will not touch upon, because we have been discussing and we have talked and discussed about the rights of consumers. What are the provisions with regard to protection of the interest of the consumers? Therefore, we will just look at how the law has dealt on the issue of offenses which relates with the activities of consumers.

In that regard, we will try to understand two important concepts, which are there; unauthorized use of electricity and theft of electricity. Then, we will just look at the case law that how the court has helped in clarifying the ambiguity, if any, in this matter.

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➤ **Unauthorised Use of Electricity**

➤ **Section 126 – Assessment –**

- In on inspection of any place – it is found that a person is indulging in unauthorised use of electricity - he has to provisionally assess to the best of his judgment the electricity charges payable – in terms of benefit accrued by such unauthorised use
- An order of provisional assessment shall be served on the person who owns the premise
- The person may accept the assessment and deposit the assessed amount with the licensee within seven days of the assessment order – or file an objection – to be addressed within 30 days by the assessing officer

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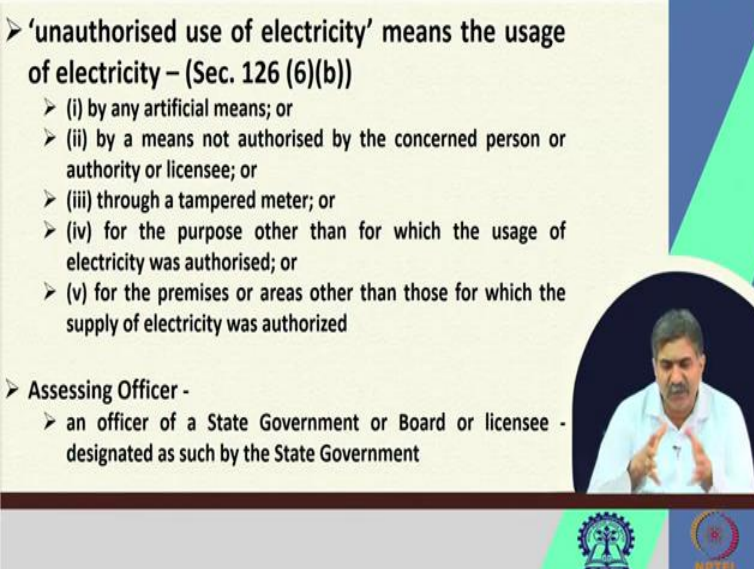
When you look at the definition of unauthorized use, as we have discussed that certain categories of activities are identified as unauthorized use, now what the law says is that the officer shall visit the premise of the person who is using the electricity in an unauthorized manner and then he shall assess the usage of electricity to best of his judgment, and accordingly, he will identify that what amount is to be charged from such user.

And how would you calculate? The law says that you calculate by looking at the benefit. He will try to assess that what benefits, what accrued by such unauthorized user. Now, best of his judgment is something which is a very well-known legal physiology, I would say. In authorizing the officer to assess the monetary liability, I would say. That is how you would also find under the tax law. You have this provision where the tax authorities, they assess the liability by applying principle of best judgment.

Now, here the law says, let the assessment be done and obviously, that assessment would be a provisional assessment. It would not be a kind of final assessment because final assessment is possibly only after cross examining, only after cross verifying the information from the unauthorized user and then taking necessary information from the licensee.

So, that order of provisional assessment, it says that it is to be served upon that unauthorized user. The one who owns the premise and then the law says that there are options available, what are the options? One option is that the unauthorized user willingly accepts the assessment done by the officer and then deposits the sum within seven days, or if the unauthorized user is not accepting the assessment done, if it is done on a higher side and if an unauthorized user believe that it is not done very meticulously and without any objectivity then he can always file an objection to the assessing officer within 30 days of the demand which has been placed by the officer to him.

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➤ **'unauthorised use of electricity' means the usage of electricity – (Sec. 126 (6)(b))**

- (i) by any artificial means; or
- (ii) by a means not authorised by the concerned person or authority or licensee; or
- (iii) through a tampered meter; or
- (iv) for the purpose other than for which the usage of electricity was authorised; or
- (v) for the premises or areas other than those for which the supply of electricity was authorized

➤ **Assessing Officer -**



- an officer of a State Government or Board or licensee - designated as such by the State Government

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Now, who is the assessing officer? It says that assessing officer is the one who is appointed by the state government or board or by licensee and it is designated such by the state government. So, you can very well make out that he would be one of the officers of the licensee. Why the word "Board" is appearing because if wherever the unbundling has not happened, wherever the SEBs are still operating or were operating in 2003, in order to not to allow any gap to exist the terminology of board was used, or it could be by the state government also. So, assessing officer is the one who has been given responsibility to go and identify that whether the use is unauthorized. If answer is yes, then what is the liability of the user and accordingly, ask the user to pay the sum. That is what it says.

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- **Presumption that unauthorized use of electricity was taking place for three months immediately preceding the date of assessment in case of domestic and agriculture consumers and six months immediately preceding in case of all other consumers**
 - Presumption shall be rebutted by the person/occupier/possessor of such premises
 - The assessment shall be made at the rate of one and a half times the tariff applicable
- **An appeal shall against the assessment officer u/s 127**
 - Appeal within 30 days
 - To entertain the appeal - half of the assessed amount to be deposited
 - The order of the authority shall be final – passed with the consent of the parties.



- **'unauthorised use of electricity' means the usage of electricity – (Sec. 126 (6)(b))**
 - (i) by any artificial means; or
 - (ii) by a means not authorised by the concerned person or authority or licensee; or
 - (iii) through a tampered meter; or
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 - (v) for the premises or areas other than those for which the supply of electricity was authorized
- **Assessing Officer -**
 - an officer of a State Government or Board or licensee - designated as such by the State Government



Now, there is some guideline also indicated in the law. What does the guideline say? That, if the unauthorized use is happening by, is taking place in the premise of agriculture consumers or domestic consumers then it is to be presumed that it was an unauthorized use going for three-months time and for all other set of consumers it was to be as presumed that it was for six months, and that is how the assessment is to be done.

The unauthorized user can very well establish, can very well counter or rebut the claim of the assessing officer, what shall be the rate of asking the person who owns the premise or under whom the premise is possessed that you have to pay at the rate of 1.5 times of the tariff

applicable. So, this is what is the quantum for assessing; that is what it says. If someone is unsatisfied with the assessment done by the assessing officer then that person can file an appeal against the order of the assessment officer under section 127 of the Electricity Act, and such filing should be done within 30 days.

But then, the law says that the appellate officer shall entertain the appeal under section 127, only when half of the amount which has been assessed has been deposited, that is what is a precondition, prerequisite laid down under the law. That you deposited and then you file an appeal, then only the appellate authority will entertain an appeal.

This kind of provision in the law is seen where you would find that there is a financial loss involved and an attempt has been made to not to allow the litigating parties to take undue advantage of legal proceedings. So, law does not permit in the instant case that you file an appeal, you obtain a stay order, and then you continue to enjoy the benefit.

So, if there is an objection by the user, user is supposed to pay that half of the assessed amount. And in such a situation, what would happen? That user would also be equally active to get the matter resolved because, after all, if he is of the opinion that it is not a case of unauthorized use then that amount of money is unnecessarily lying with the authority. And that is why this provision of depositing half of the amount, so that the agreed party could also be keen to settle the issue, keen to resolve the issue at the earliest.

Further, it says that if assessing officer decides something and if it goes on an appeal before the appellate authority then the order of the appellate authority shall be final if it has been passed with the consent of the parties. This is all about bringing a complete end to litigative processes. It is not about once you have agreed; then again, you are challenging it to the higher court. You are not satisfied, you are going to the next forum. This is what is not contemplated under the Act.

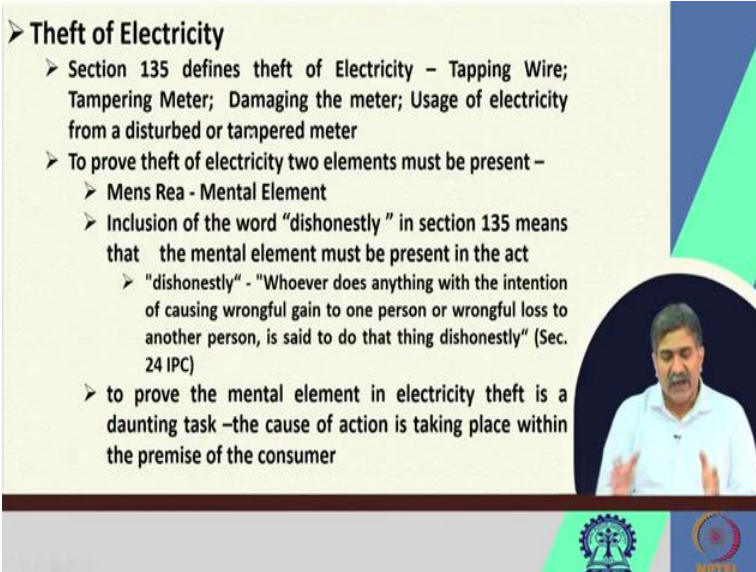
It said that you bring your document, you satisfy the appellate authority that how it is not a case of unauthorized use or how the assessment done is not proper and then accordingly, settle the issues and pay the amount. Now, unauthorized use needs to be understood in this sense that there is a permission to use electricity, but then the way it has been used is not sanctioned.

So, that is what when you look at the definition, when you look at the instances, it says by any artificial means. So, perhaps you have supply, you have a connection, the user has a connection, but then that is getting unnecessarily tampered with the artificial means, or by means not authorized by the concerned person or authority or licensee.

So, person X has taken the connection, but then he has given the connection to the neighboring premise, whereas neighboring premise was supposed to apply for a fresh connection, unauthorized use, because he has the necessary approval to use electricity, but he does not have the approval to connect his electricity connection with the neighboring premise.

So, unauthorized use for the purpose for which it has been given. The nature of connection is domestic, but then it is used for industrial purpose. So, unauthorized use needs to be understood in this context, that you have an authorization but then for the purpose for which you are using the electricity is something which has not been sanctioned, which has not been approved, that is what it says.

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➤ Theft of Electricity

- Section 135 defines theft of Electricity – Tapping Wire; Tampering Meter; Damaging the meter; Usage of electricity from a disturbed or tampered meter
- To prove theft of electricity two elements must be present –
 - Mens Rea - Mental Element
 - Inclusion of the word “dishonestly” in section 135 means that the mental element must be present in the act
 - “dishonestly” - “Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly” (Sec. 24 IPC)
 - to prove the mental element in electricity theft is a daunting task –the cause of action is taking place within the premise of the consumer

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And there where you need to distinguish between theft and unauthorized use. Theft which is there under section 35 of the Act, defined as tapping wire, tempering meter, damaging the meter, usage of electricity from a disturbed or tempered meter; these are the activities identified to be constituted under the definition of theft under section 135.

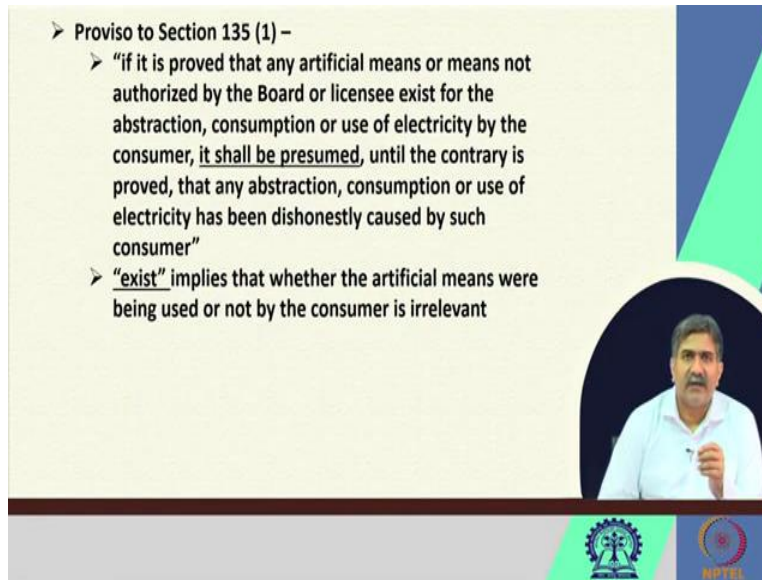
Now, section 135 very well refers to two set of attributes. One is the mental attribute, and another is the physical attribute. Because section 135 starts with whosoever dishonestly, so the word “dishonest” under section 135 connotes the ill intention of the wrong doer. We study in criminal law except in case of strict liability that if there is no wrong intention, if there is no ill intention, there would be no culpability.

So, intention to commit wrong is an important prerequisite to bring an action or omission within the definition of offense. And that is how section 135 says dishonestly, and how this word dishonestly is defined? Let us look at section 24 of IPC. It says whosoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly. By this definition, you can very well make out that this definition has an applicability on property.

Either you are gaining or you are losing without any authorization. There is some wrongful means to gain or cause loss to others. Now, as I said, that mental element is one of the important attribute, but then you would agree with me that to establish malafide intention is not that an easy task when it comes to inquiring about the theft of electricity because the appliances are placed inside the premise of the consumer. So, how do you really identify that?

There may be a situation where the tempering is done in such a meticulous way, very difficult to make out, and the visit to the premise itself may be a challenging task. So, to prove mental element appears to be not an easy task in this case.

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➤ Proviso to Section 135 (1) –

- “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”
- “exist” implies that whether the artificial means were being used or not by the consumer is irrelevant

Now, in order to streamline the culpability element in stealing the property, I would say, you find a very relevant provision has been added under section 135. What does it say? That if it is proved that any artificial means or means not authorized by board or licensee exist for the extraction, consumption or use of electricity by the consumer, it shall be presumed until the contrary is established. So, the word "Exist" and the word "Shall be presumed" becomes very important for understanding the legal implication.

What is it? It categorically says that if there is something which is existing, it shall be presumed. Then, it is irrelevant whether the consumer has the information or not. It is irrelevant whether consumer has been using it or not. If consumer says there is something which was there but I have never gained anything wrongfully, this peace of argument would not save the person who has been booked under section 135.

So, you can make out the way the law addresses that issue of challenge which I highlighted upon. That there is a challenge to identify, but then what it says? That if there is something which is there, the responsibility lies with the person to establish that how the case would not fall under the definition of theft.

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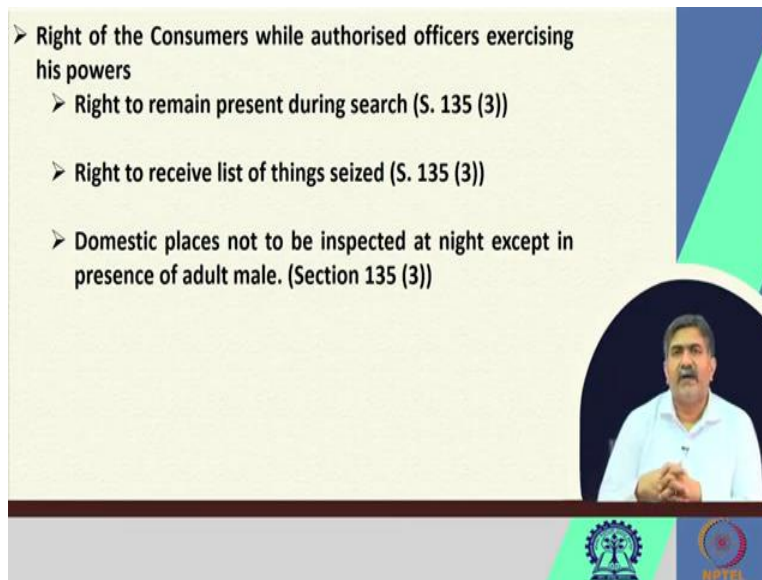
- Physical Element –
 - Section 135 (1) (a) to (e)
- Aims to identify the activity of electricity theft by any class of consumer is on the collection of revenue – to be charged on the offender according to the financial gain incurred by him brought out by the assessment of the assessment officer
- There are very low measures for severe punishments so that it is ensured that the same crime does not take place again
- Perhaps, due to poor financial condition of the distribution utilities

Now, mental element is there with the inclusion, with the insertion of the word dishonestly; physical element is there when you look at the set of activities which are being scripted there, tempering meter, damaged meter if you are sourcing electricity through those; those are the activities which are being indicated there.

Now, the way the law addresses the issue of theft and unauthorized use of electricity, it is more about compensating the licensee for the revenue loss. And perhaps, it appears to be for a very obvious reason that financial condition of licensees are not really good. Therefore, instead of dragging the matter in the court for penalizing the accused and putting him behind the bar would not serve the purpose, would not really bring justice, and would not really deliver justice to the utilities in a very appropriate sense. Obviously, if something wrong has been done and if it falls under the bracket of penal provision, it is well understood that imprisonment is a logical conclusion of such wrongdoing.

But then, when you look at the scheme, when you look at the way the 2003 Act addresses this, it says that okay, it is a case of theft, there is something which has been done with dishonest approach, but then leave it, you look for what the loss licensee has incurred and ask the wrongdoer, ask the accused to pay the same.

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➤ Right of the Consumers while authorised officers exercising his powers

- Right to remain present during search (S. 135 (3))
- Right to receive list of things seized (S. 135 (3))
- Domestic places not to be inspected at night except in presence of adult male. (Section 135 (3))

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Now, before I go to the punishment part, let us look at what the law says on the rights of consumer while authorized officer exercising his powers. It says that the consumer has a right to remain present when the search is going on, and it says consumer has the right to receive the complete list, that what all are being seized. And then, it says that domestic places are not to be searched in night except in presence of an adult male. So, that is what, this kind of safeguard, you may say, is given in under the Electricity Act.

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➤ **Punishment -**

- Section 135 (Theft of Electricity) –
 - Imprisonment for a term which may extend to three years or with fine or with both.
 - Load 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 .
 - Load 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 – may also lead to disconnection of supply

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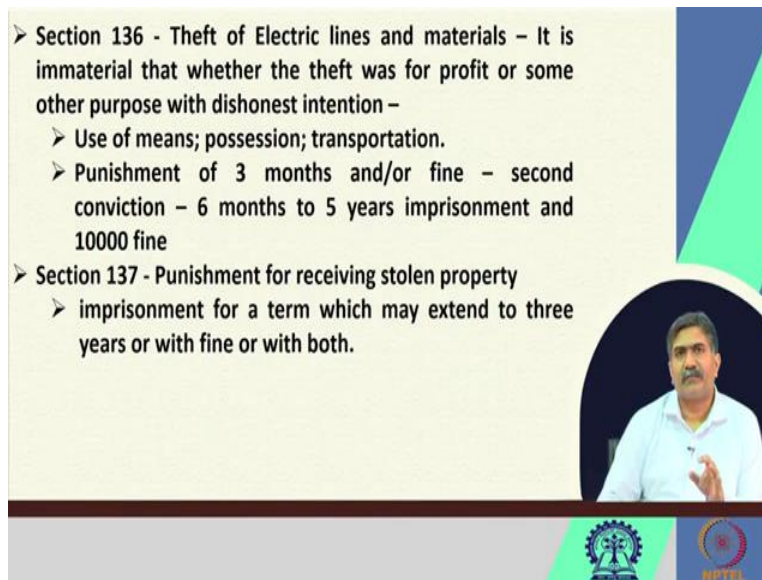
Now, these are the punishments which are given. You look at it, punishment under section 135, what it says, is imprisonment for a term which may extend to three years or with fine or with both. And then, it says when the load is less than 10 kilowatt, for the first conviction, fine not less than three times of the financial gain.

So, for penalizing the wrongdoer, the stress is on financial gain of the wrongdoer and then ask that wrongdoer to very well compensate the loss of the licensee. That you have gained by using the electricity in a wrongful manner, now, it is the licensee which is saying that whatever wrongful gain you had; now you better come and pay the same to me, and same not in terms of volume, because it says not less than three times.

So, compensation is on a higher side. Then, second and subsequent conviction, fine not less than six times of the financial gain. So, if you keep on violating the law, if you keep on stealing the electricity; the quantum of compensation increases. And then, it says for second and subsequent conviction, it says imprisonment for a term not less than six months but which may extend to five years.

Then, there is an option also given to the distribution licensee that you can very well disconnect the supply. So, if you look, if you carefully read the provisions, you would find that the idea underlying of penal provision is to make good of the loss what the licensee is suffering from such illegal Act of a consumer.

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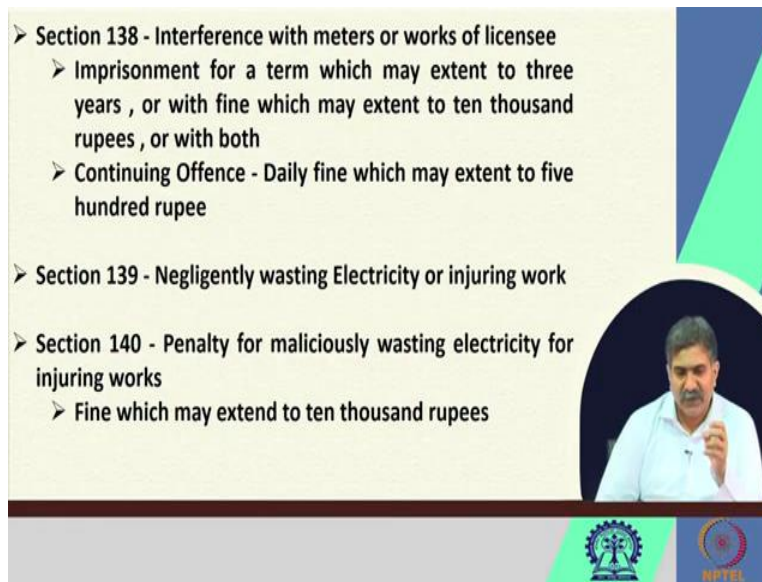


- Section 136 - Theft of Electric lines and materials – It is immaterial that whether the theft was for profit or some other purpose with dishonest intention –
 - Use of means; possession; transportation.
 - Punishment of 3 months and/or fine – second conviction – 6 months to 5 years imprisonment and 10000 fine
- Section 137 - Punishment for receiving stolen property
 - imprisonment for a term which may extend to three years or with fine or with both.

Apart from section 135, there are other activities also which are identified under the bracket of theft. It says theft of electric lines and material under section 136. Then, the law categorically says it is immaterial whether it has been done for any profit for oneself or for some other purpose, but what is important is that it has to be a dishonest intention, and what is there, is that for the punishment of three months or fine and second conviction six months or upto five years of imprisonment.

And section 137 also brings in culpability to the door of the person who has bought the stolen property, punishment for receiving a stolen property. So, if someone steals the property of licensee and attempts to sell it in the open market, attempts to sell it to anyone then the one who is buying those property would also get punishment; imprisonment for a term which may extend to three years or with fine or the both.

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The slide contains the following text:

- Section 138 - Interference with meters or works of licensee
 - Imprisonment for a term which may extend to three years , or with fine which may extend to ten thousand rupees , or with both
 - Continuing Offence - Daily fine which may extend to five hundred rupee
- Section 139 - Negligently wasting Electricity or injuring work
- Section 140 - Penalty for maliciously wasting electricity for injuring works
 - Fine which may extend to ten thousand rupees

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Section 138 makes the action punishable when there is some interference with meters or works of licensee and for which you have an imprisonment for a term which may extend to three years or with fine which may extend to 10,000. Continuing in offense, a daily fine, which may extend to Rs. 500. Now, continuing offense becomes very significant, when you talk about theft of electricity. It has been identified, you have been given the notice that, see, what you have done is not as per the law, this is illegal, and then you ignore the same and then continue to get the electricity to illegal means.

So, continuing offense becomes very significant here because it is not about seizing a property and taking it in the possession of licensee. That is not what is really feasible in every situation, because electricity wire is going on, is passing through that area and there is always a possibility that user may try to get the benefit by opting ulterior means.

Section 139, to me, appears to be a very important provision because it says that if someone is wasting electricity negligently then he should be punished also for the same. Section 140 talks about penalty for malicious wasting of electricity, fine which may extend to 10,000 Rupees. Section 139, read with section 140, establishes the law point very categorically and establishes this viewpoint that electricity is one such commodity which is badly needed for well being of an individual and also it is one of the valuable resources which must not be allowed to be wasted. That is what it says.

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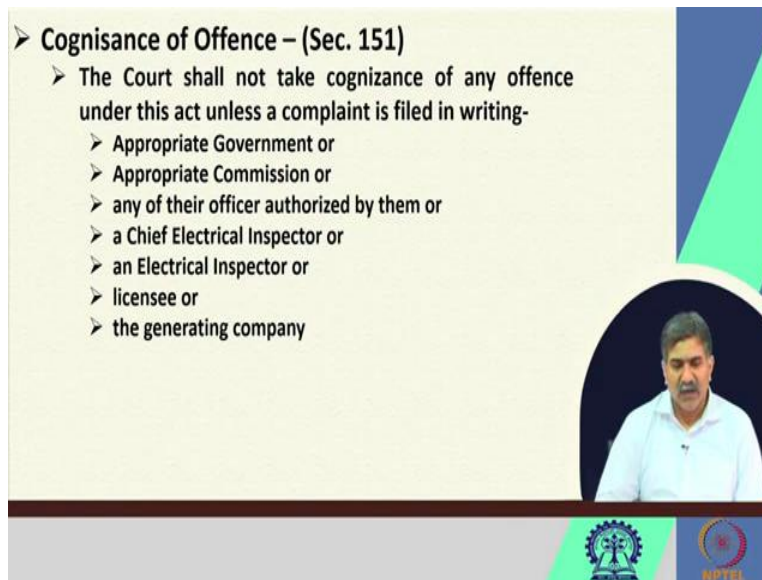
➤ Special Court to try these offences –

- Constitution of special courts by the state government to try offences under the Act (Sec. 153)
- State Government will appoint a single judge in concurrence with the HC
- Offences mentioned u/ss 135 to 140 and 150 – are to be tried
- Special Court shall try the offence in a summary way
- the Special Court has been empowered not only to try the offences, but also to determine the civil liability against the consumer in respect of theft of energy (Sec. 154(5))

For trying the offenses under the Electricity Act, particularly from section 135 to 140 and section 150, which talks about abatement, special court is to be constituted by the state government, wherein there will be a single judge, but that appointment shall happen only with the concurrence of the high court. Why concurrence of the high court? Because of independence of judiciary, it is desirable, and it is mandated that the appointment in the judicial way must always have the approval of the high court. So that element of judicial independence is maintained and remained sacrosanct. The law says that the manner of trial would be a summary one and then it also empowers the special court to not only try the offenses but also to determine the civil liability against the consumer in respect of section 154 (5).

So, why civil liability? Because as I said, the focus of the law is more to compensate the licensee; whatever the loss the licensee has incurred, there is a responsibility on the consumer to compensate the licensee. That is what is the scheme. So, to compensate instead of allowing it to be done by a different institution, a special court itself has been authorized to do the same.

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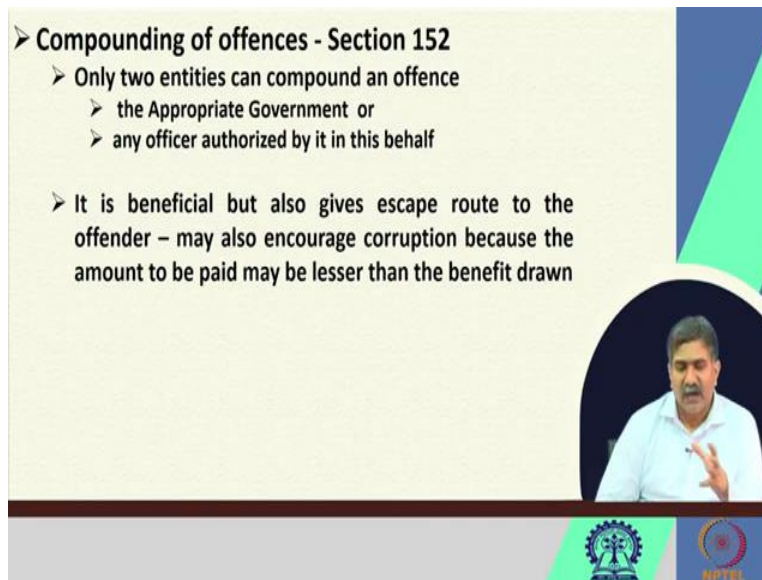
➤ **Cognizance of Offence – (Sec. 151)**

- 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

Now, section 151 says that who all can take cognizance, how the court shall take cognizance, what shall be the way when the court shall be asked to now look into the matter? It says cognizance shall be taken only when the complaint has been filed by the appropriate government or by the appropriate commission or any officer authorized by them or chief electrical inspector or an electrical inspector or a licensee or a generating company.

So, court shall not be allowed to take cognizance unless and until the complaint has been filed by either of them. That is what is significant. This is also, you may say is to minimize the harassment because when it says cognizance will be taken by the court only when the complaint is filed by these officers or these entities, obviously, there is a responsibility on these entities of officers to weight, to evaluate that whether it is a case of offense or not.

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➤ **Compounding of offences - Section 152**

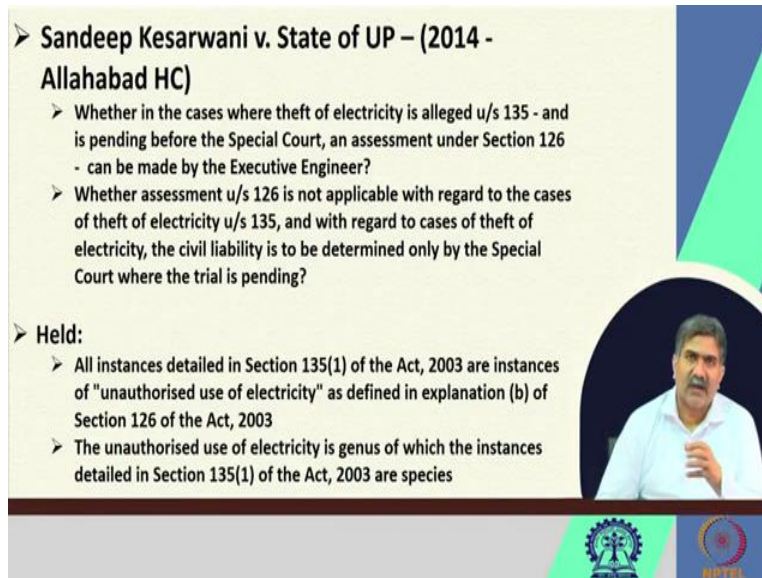
- Only two entities can compound an offence
 - the Appropriate Government or
 - any officer authorized by it in this behalf
- It is beneficial but also gives escape route to the offender – may also encourage corruption because the amount to be paid may be lesser than the benefit drawn

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The law also allows the wrongdoer to admit the guilt and then settle the matter. Compounding of offenses is allowed under section 152. If you look at the way criminal law reform is taking place, the way we have been talking about the reform, it is always good to have these kinds of provisions. So that, if there is a realization on the part of the accused that accused has done wrong and, if necessary, an opportunity has been given to the accused to admit the guilt and then settle the matter, it would really be in the interest of justice.

However, one can always raise a flag that when the system is not very honest, when probity is not what governs the functioning of the system. Then how do you see compounding of offenses, whether it would amount to escape the liability by paying certain amount with sort of understanding between the wrongdoer and the one who has been authorized to decide on compounding of an offense.

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➤ **Sandeep Kesarwani v. State of UP – (2014 - Allahabad HC)**

- Whether in the cases where theft of electricity is alleged u/s 135 - and is pending before the Special Court, an assessment under Section 126 - can be made by the Executive Engineer?
- Whether assessment u/s 126 is not applicable with regard to the cases of theft of electricity u/s 135, and with regard to cases of theft of electricity, the civil liability is to be determined only by the Special Court where the trial is pending?

➤ **Held:**

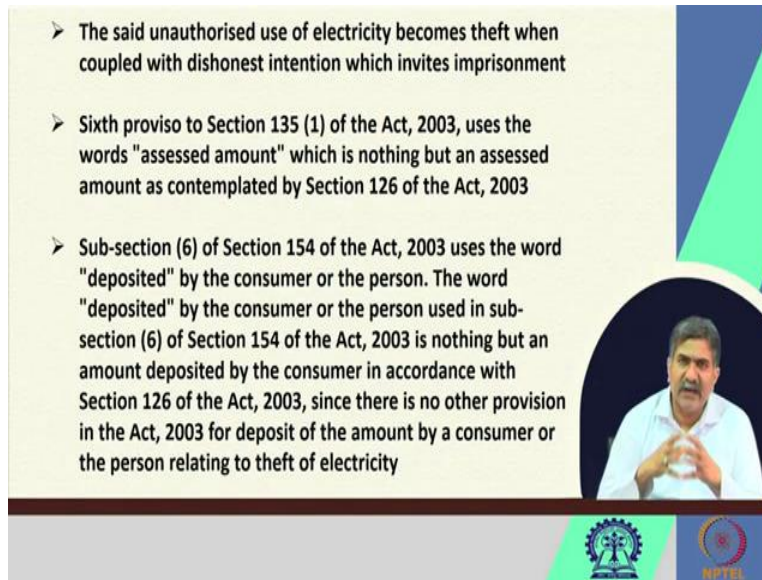
- All instances detailed in Section 135(1) of the Act, 2003 are instances of "unauthorised use of electricity" as defined in explanation (b) of Section 126 of the Act, 2003
- The unauthorised use of electricity is genus of which the instances detailed in Section 135(1) of the Act, 2003 are species

The slide features a video inset of a man in a white shirt speaking. At the bottom, there are logos for a law firm and a 'HOTEL' logo.

Allahabad high court, in 2014, clarifies the distinction between unauthorized use of electricity under section 126 and theft of electricity under section 135. Because the question which was raised is that, can there be a concurrent action? Can a person who has been alleged to have unauthorized use of electricity, who has been alleged that he has used the electricity in an unauthorized manner, also be liable for punishment under section 135? Is it possible? And second, is that whether the civil liability would be assessed by the special court when the trail is pending.

Now, in this case, the court has analyzed the scheme and the court has found that when you look at the set of activities identified as illegal under section 135, you have overlapping with set of activities identified under section 126 also; meaning thereby that there is a possibility where unauthorized use of electricity would also be a case of theft of electricity, that is very much possible.

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- The said unauthorised use of electricity becomes theft when coupled with dishonest intention which invites imprisonment
- Sixth proviso to Section 135 (1) of the Act, 2003, uses the words "assessed amount" which is nothing but an assessed amount as contemplated by Section 126 of the Act, 2003
- Sub-section (6) of Section 154 of the Act, 2003 uses the word "deposited" by the consumer or the person. The word "deposited" by the consumer or the person used in sub-section (6) of Section 154 of the Act, 2003 is nothing but an amount deposited by the consumer in accordance with Section 126 of the Act, 2003, since there is no other provision in the Act, 2003 for deposit of the amount by a consumer or the person relating to theft of electricity

Therefore, the law has been clarified, said that when unauthorized use of electricity is being done with dishonest intention, then section 135 gets attractive. If it is without dishonest intention, it is not a case of theft, but if it is with dishonest intention, then both sections will get attracted. And the court looked at the language of the Act, language of section 135 and language of section 154, court said that you look at the language.

Section 135 in sixth proviso says assessed amount, meaning thereby something which has been assessed under section 126, because 126 is talking about assessment by the assessing officer for such unauthorized use, and section 154 talks about amount deposited; what amount deposited? What has been assessed by the assessing officer? So, this term assess, this term deposited, under section 135 and section 154, respectively, establishes this relationship between these two provisions, section 126 and section 135, that they are overlapping in nature.

The only thing is that section 135 will get attracted, and it will become theft only when it is a case of dishonest intention. That is what the court has clarified. And this is on offenses under the Act in relation to consumers. Thank you very much.