

THE CHEMICAL WEAPONS CONVENTION ACT, 2000

34 of 2000

[AS ON 01.05.2014]

[26th August, 2000]

An Act to give effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and to provide for matters connected therewith or incidental thereto.

whereas a Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction was signed on behalf of the Government of India at Paris on the 14th day of January, 1993;

And whereas India, having ratified the said Convention, has to make provisions for giving effect thereto and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:--

1. Short title, extent, application and commencement: (1) This Act may be called the Chemical Weapons Convention Act, 2000.

(2) It extends to the whole of India, and it shall apply to--

(a) citizens of India outside India; and

(b) associates, branches or subsidiaries, outside India of companies or bodies corporate, registered or incorporated in India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. Definitions: In this Act, unless the context otherwise requires,--

(a) "Article" means an Article of the Convention;

(b) "Chemical Weapons" means,--

(i) the Toxic Chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;

(ii) the munitions and devices, specifically designed to cause death or other harm through the toxic properties of those Toxic Chemicals specified in sub-clause (i), which would be released as a result of the employment of such munitions and devices;

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-clause (ii), together or separately;

(c) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction signed on behalf of the Government of India at Paris on the 14th day of January, 1993;

(d) "enforcement officer" means a person appointed as such by the Central Government under sub-section (1) of section 9 or by the State Government under sub-section (2) of that section;

(e) "goods", in relation to Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, means any material, commodity, article or compound consisting of such Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine and includes materials, commodities, articles, compounds or apparatus used in the

production, processing or storing of Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine;

(f) "industry" includes a Facility;

(g) "Inspector" means an individual designated by the Technical Secretariat, according to the procedures as set forth in Part II, Section A, of the Verification Annex to the Convention, to carry out an inspection or visit in accordance with the Convention;

(h) "National Authority" means the National Authority for the Chemical Weapons Convention established under sub-section (1) of section 6;

(i) "Organisation" means the Organisation for the prohibition of Chemical Weapons established pursuant to Article VIII;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "purposes not prohibited under the Convention" means-

(i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(ii) protective purposes namely those purposes directly related to protection against Toxic Chemicals and to protection against Chemical Weapons;

(iii) military purposes not connected with the use of Chemical Weapons and not dependant on the use of the Toxic Properties of Chemicals as a method of warfare; and

(iv) law enforcement including domestic riot control purposes;

(l) "State Party" means a signatory or acceding State to the Convention whose instrument of ratification or accession has been deposited with the Depository of the Convention;

(m) words and expressions used in this Act and not defined but defined in the Convention, or the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Convention or Code.

3. Application of the Convention: (1) Notwithstanding anything to the contrary contained in any other law, the provisions of the Convention set out in the Schedule to this Act shall have the force of law in India.

(2) The Central Government may, from time to time and by notification in the Official Gazette, amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the said Convention set out therein.

4. Power of Central Government to deny the request for inspection: Where the Central Government considers any inspection of a Chemical Weapons Production Facility in India under this Act to be against the interest of national security or economic interests of India, it may deny the request for such inspection.

5. Power of Central Government to declare Cessation of the Act: The Central Government may, by notification in the Official Gazette, declare that this Act shall cease to be in force in case the Government of India withdraws from the Convention in accordance with the provisions of Article XVI, and on such declaration this Act shall cease to be in force, but its expiry under the operation of this Section shall not affect--

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made there under or any order made under any such rule, or

(b) any right privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made there under or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right privilege, obligation, liability penalty, forfeiture or punishment as afore said,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

6. Establishment of National Authority: (1) For the purposes of this Act, the Central Government shall establish, by notification in the Official Gazette, an Authority to be known as the National Authority for implementing the provisions of the Convention which shall consist of a Chairperson and such number of Directors as may be appointed by the Central Government.

(2) The Central Government may appoint officers and such other employees to the National Authority as it thinks fit for the purposes of this Act

(3) The salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the Directors shall be such as may be prescribed.

(4) The salary and allowances payable to, and other terms and conditions of service of, officers and other employees of the National Authority shall be such as may be prescribed.

(5) In the exercise of its powers and performance of its functions under this Act, the National Authority shall be subject to the control of the Central Government.

7. Powers and functions of National Authority: (1) Subject to the provisions of this Act,--

(a) it shall be the general duty of the National Authority to fulfill, on behalf of the Government of India, the obligations under the Convention;

(b) it shall be incumbent on the National Authority to act as the national focal point for effective liaison with the Organisation and other States Parties on matters relating to the Convention.

(2) Subject to the provisions of sub-section (1), the functions of the National Authority shall be to--

(a) interact with the Organisation and other States Parties for the purpose of fulfilling the obligations of the Government of India under the Convention;

(b) monitor compliance with the provisions of the Convention;

(c) regulate and monitor the development, production, processing, consumption, transfer or use of Toxic Chemicals or Precursors as specified in the Convention;

(d) make request to, or to receive request from, a State Party for assistance and protection under Article X, against the use or threat of use of Chemical Weapons;

(e) manage routine inspection or Challenge Inspection or managing investigation, in case a complaint of use of Chemical Weapons or riot control agents as a method of warfare is received from the Organisation;

(f) conduct inspections for the purposes of this Act;

(g) interact with the Organisation in respect of acceptance of request of India for Challenge Inspection or to counter any frivolous or defamatory request made by any State Party against India to the Organisation;

(h) scrutinise and accept list of Inspectors and to verify the Approved Equipment brought by an Inspection Team on to the Inspection Site;

(i) provide escort to the Inspection Team and the Observer within the territory of India;

(j) identify and oversee the closure and destruction of Chemical Weapons, Chemical Weapons Production Facilities, Old Chemical Weapons or Abandoned Chemical Weapons;

(k) negotiate Managed Access during the Challenge Inspection;

- (l) ensure decontamination of Approved Equipment after completion of an Inspection;
- (m) advise Central Government for laying down safeguards for transportation, sampling or storage of Chemical Weapons and fixation of standards for emission or discharge of environmental pollutants arising out of the destruction of Chemical Weapons, Old Chemical Weapons, Abandoned Chemical Weapons or Chemical Weapons Production Facility;
- (n) ensure data base confidentiality and maintain secrecy of confidential information and technology collected or received by the National Authority under this Act;
- (o) facilitate exchange of scientific and technological information relating to developments in chemicals amongst the States Parties;
- (p) call for such information from any person which the National Authority has reasonable cause to believe that such information may be required for complying with the provisions of the Convention;
- (q) approve and declare, on behalf of the Government of India, a single small-scale facility for production of Toxic Chemicals listed in Schedule 1 in the Annex on Chemicals to the Convention for purposes not prohibited under the Convention;
- (r) provide training to enforcement officers;
- (s) ensure protection of environment, health and safety of the people during transportation, sampling, storage or destruction of Chemical Weapons, Chemical Weapons Production Facilities, Old Chemical Weapons or Abandoned Chemical Weapons;
- (t) co-ordinate exchange of scientific and technological information among laboratories handling Toxic Chemicals or Precursors;
- (u) determine, from time to time, the quantity limit that a person at any time may produce, otherwise acquire, retain, transfer or use any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, any Discrete Organic Chemical including Discrete Organic Chemical containing elements of phosphorous, sulphur or fluorine for purposes not prohibited under the Convention;
- (v) such other functions as may be prescribed.

8. National Authority to submit initial, annual and other periodical declarations to Organisation: The National Authority shall prepare such initial, annual and other periodical declarations regarding Toxic Chemicals or Precursors listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, Chemical Weapons, Old Chemical Weapons, Abandoned Chemical Weapons, riot control agents, Chemical Weapons Production Facilities, past transfers of Chemical Weapons or their production equipments or any other declaration required to be made under the Convention and shall submit such declarations to the Organisation at such time as are specified under the Convention.

9. Appointment of enforcement officers: (1) The Central Government may, by notification in the Official Gazette, appoint such of the officers of the National Authority ²[or of the Central Government] as it thinks fit to be enforcement officers for the purposes of this Act:

²[Provided that such officers shall fulfil the prescribed criteria.]

(2) The State Government may, as and when so directed by the Central Government and by notification in the Official Gazette, appoint such of its officers of gazetted rank as it thinks fit to be enforcement officers for the purposes of this Act and assign to them such local limits as it may think fit.

(3) Every officer appointed as enforcement officer under sub-section (1) or under sub-section (2) shall be furnished by the Central Government or by the State Government, as the case may be, with a certificate of appointment as an enforcement officer and the certificate shall, on demand, be produced by such enforcement officer.

10. Power of National Authority to issue directions: Notwithstanding anything contained in any other law but subject to the provisions of this Act, the National Authority may, in the exercise of its

powers and performance of its functions under this Act, issue directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue direction under this section includes the power to direct--

(a) the closure, prohibition or regulation of any company, firm or industry engaged in the development, production, processing, consumption or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine; or

(b) the stoppage or regulation of the supply of electricity or water or any other service to such company, firm or industry.

11. Power of Central Government to constitute Committee: The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute a Committee by such name as may be specified in the order for the purpose of overseeing the functions of the National Authority and exercising and performing such of the powers and functions of the Central Government under this Act (except the power to make rules under section 56) as may be specified in the order and subject to the supervision and control of the Central Government and the provisions of such order, such Committee may exercise the powers or perform the functions so specified in the order as if such Committee had been empowered by this Act to exercise those powers or perform those functions.

12. Power of National Authority to call for information, etc: (1) Notwithstanding anything contained in any other law for the time being in force, the National Authority may, by general or special order, call upon a person, to furnish to that Authority periodically or as and when required any information, declaration or return concerning Toxic Chemicals or Precursors listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, Chemical Weapons, Old Chemical Weapons, Abandoned Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, single small-scale facility or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine with such particulars as may be specified by the National Authority.

(2) No person shall, when complying with any requisition made under sub-section (1), give any information or furnish any declaration, return or statement which he knows, or has reasonable cause to believe to be false or not true in any material particular.

13. Prohibition to develop, produce, acquire, etc., Chemical Weapons: (1) No person shall--

(a) develop, produce, otherwise acquire, stockpile, retain or use Chemical Weapons or transfer, directly or indirectly, any Chemical Weapons to any person;

(b) use riot control agents as a method of warfare;

(c) engage in any military preparations to use Chemical Weapons;

(d) assist, encourage or induce, in any manner, any person to engage in-

(i) the use of any riot control agent as a method of warfare;

(ii) any other activity prohibited to a State Party under the Convention.

(2) The prohibition contained in sub-section (1) shall not apply to the retention or possession of Chemical Weapons, which are permitted by the Convention, pending destruction of such Weapons.

14. Knowledge about Old or Abandoned Chemical Weapons to be informed to national Authority: Any person having knowledge about the possession or location of Old Chemical Weapons or Abandoned Chemical Weapons shall inform the National Authority of such possession and the precise location of such Old Chemical Weapons or Abandoned Chemical Weapons within seven days from the commencement of this Act:

Provided that where the knowledge about the possession or location of Old Chemical Weapons or Abandoned Chemical Weapons is obtained after the commencement of this Act, an information about knowledge of such possession or location shall be given to the National Authority within seven days from the occurrence of such knowledge.

15. Prohibition to develop, produce, acquire, etc., Toxic Chemical or precursor: No person shall: (a) produce, acquire, retain or use toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention, outside the territories of States Parties, and shall not transfer such Chemicals or Precursors outside the territory of India except to another State Party;

(b) produce, acquire, retain, transfer or use Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention without permission from the National Authority and unless--

(i) the Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention are for the purposes to be applied to research, medical, pharmaceutical or protective purposes; and

(ii) the types of Toxic Chemicals or Precursors are strictly limited to those that can be justified with reference to the purposes specified in sub-clause (1) and the quantities of such Toxic Chemicals or Precursors for such purposes at any time do not exceed the limits fixed by the National Authority;

(c) transfer the Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention to another State Party outside India except--

(i) for the purposes specified in sub-clause (i) of clause (b); and

(ii) in accordance with the procedure set out in Part VI of the Verification Annex to the Convention:

Provided that no Toxic Chemicals or Precursors referred to in clause (c) shall be re-transferred to any third State.

16. Restriction of transfer of Toxic Chemical or Precursor listed in Schedule 2: ³[No person shall transfer to, or receive from, a State which is not a party to the Convention or any person who is not a citizen of a State Party, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention.]

17. Export or import to be made in accordance with Export and Import Policy: No person shall export from, or import into, India a Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention except in accordance with the provisions of the Export and Import Policy determined by the Central Government from time to time under the Foreign Trade (Development and Regulation) Act, 1992 and the Orders issued thereunder. **22 of 1992**

18. Registration of persons engaged in production, etc., of any Toxic Chemical or Precursor:

(1) ⁴[Subject to such exemptions and thresholds as may be prescribed, every person who is] engaged in the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine shall make, within thirty days from the commencement of this Act, an application for registration of his name, as a producer, processor, acquirer, consumer, transferor, importer, exporter or user of any Toxic Chemical or Precursor or, as the case may be, as a producer of any Discrete Organic Chemicals including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, to such registration authority as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) ⁵[Subject to such exemptions and thresholds as may be prescribed, no person, who after the coming into force of this section], desires to produce, process, acquire, consume, transfer, import, export or use any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, desires to produce any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, shall commence business unless such person has applied to the registration authority specified under sub-section (1) for registration of his name as a producer, processor, acquirer, consumer, transferor, importer, exporter or

user of any Toxic Chemical or Precursor or, as the case may be, as a producer of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine.

(3) The form of application to be made to the registration authority under sub-section (1) or sub-section (2), the particulars to be contained in such application form, the manner in which such application shall be made, the fee payable on such application, the form of certificate of registration, the procedure to be followed in granting or cancelling certificate of registration shall be such as may be prescribed.

(4) On receipt of the application referred to in sub-section (1) or sub-section (2), the registration authority shall, if the application is in the prescribed form, register the name of the applicant and grant him a certificate of registration ⁵[subject to such terms and conditions as may be prescribed].

(5) The certificate of registration granted in pursuance of this section shall be valid for a period specified therein and may be renewed from time to time for such further period and on payment of such fee as may be prescribed.

⁶[(6) Every person, to whom a certificate of registration is granted under sub-section (4), shall furnish to the Central Government periodically, or, as and when required, such information, declaration or return as may be prescribed.]

19. Power of Inspector to inspect any person or place: (1) An Inspector may inspect--

(a) any person who is engaged in--

(i) the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention; or

(ii) the production of any Discrete Organic Chemical including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine;

(b) any place where any Chemical Weapon, Old Chemical Weapon or Abandoned Chemical Weapon is located or Chemical Weapon Production Facility exists, for the purposes specified in the Verification Annex to the Convention.

(2) An Inspection Team may undertake a Challenge Inspection of any Facility or location pursuant to Article IX and such inspection shall be undertaken in accordance with the provisions of the Verification Annex to the Convention.

(3) The Inspection Team may, while carrying out a Challenge Inspection, be accompanied by an Observer to observe the conduct of the Challenge Inspection.

(4) An enforcement officer shall accompany the Inspector or Inspection Team to observe all verification activities carried out by the Inspector or Inspection Team and to provide the Inspector or Inspection Team, during the inspection, with such clarifications in connection with an ambiguity that may arise during an inspection as may be necessary to remove such ambiguity.

(5) Every Inspector or Inspection Team shall have--

(a) the right to interview any Facility personnel in the presence of enforcement officer for the purpose of establishing relevant facts;

(b) the right to request clarifications in connection with ambiguities that may arise during inspection;

(c) the right to demand production of such documentation and records which are relevant and necessary for the purpose of inspection;

(d) the right to take photographs of an object or a building located within the Inspection Site if question relating to that object or building is not resolved;

(e) the right to draw samples, perform on site analysis of such samples; and

(f) such other rights as are provided under the Convention.

(6) An Inspector or Inspection Team shall, during the conduct of verification activities or Challenge Inspection, enjoy the privileges and immunities referred to in Part II of the Verification Annex to the Convention.

(7) No sample drawn under clause (e) of sub-section (5) by an Inspector or Inspection Team shall be sent for analysis in any laboratory situated outside the territory of India.

20. Enforcement officer to enter into any place for examining and tasting facility or to conduct search: (1) Any enforcement officer shall have the right to enter with such assistance as he considers necessary, any building or place for the purpose of--

(a) verifying the correctness of any information, declaration or return furnished under sub-section (2) of section 12;

(b) performing any of the functions of the National Authority entrusted to him;

(c) determining whether any provisions of this Act or the rules made thereunder or any direction given under this Act is being complied with by any person engaged in the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemical containing elements of phosphorous, sulphur or fluorine;

(d) examining or testing any facility, record, document or any other material object, as the case may be, or conducting a search of any place or person;

(e) conducting a search where a warrant under sub-section (1) of section 22 is addressed to such enforcement officer or he is so authorised under sub-section (2) of that section.

(2) Any enforcement officer shall have a right to accompany the Inspector or Inspection Team as a representative of India during inspection in India.

21. Certain acts to constitute an offence: If any person wilfully: (a) refuses without reasonable excuse to comply with the request made by the Inspector or Inspection Team for the purpose of facilitating the conduct of that inspection in accordance with the Verification Annex to the Convention;

(b) delays or obstructs any member of the Inspection Team, Inspector, enforcement officer or the Observer in the conduct of inspection;

(c) removes or tampers with any on-site instrument or Approved Equipment installed by the enforcement officer, Inspector or Inspection Team with the intention of adversely affecting the operation of such instrument or Equipment, he shall be guilty of an offence punishable under this Act.

22. Power to issue warrant and authorization: (1) A Metropolitan Magistrate or a Judicial Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter VI or for the search, whether by day or by night, of any industry, building, conveyance or place in which he has reason to believe that any goods in relation to which an offence punishable under Chapter VI has been committed or any document or other goods which may furnish evidence of the commission of such offence is kept or concealed.

(2) Any enforcement officer or such other officer of the National Authority as is empowered in this behalf by general or special order by the Central Government or any such officer of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any person has committed an offence punishable under Chapter VI or any goods in relation to which an offence punishable under Chapter VI has been committed or any document or other goods which may furnish evidence of the commission of such offence has been kept or concealed in any industry, building, conveyance or place, may authorise any officer subordinate to him to arrest such person or search an industry or a building, conveyance or place, whether by day or by night, or himself arrest a person or search an industry or a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or such subordinate officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 23.

23. Power of entry, search, seizure and arrest without warrant or authorization: (1) Any such subordinate officer to the enforcement officer as is authorised in this behalf by general or special order by the Central Government or any such subordinate officer to the enforcement officer as is authorised in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any goods in relation to which an offence punishable under Chapter VI has been committed or any document or goods which may furnish evidence of the commission of such offence is kept or concealed in any industry, building, conveyance or place, may, between sunrise and sunset,-

(a) enter into and search any such industry, building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, Old Chemical Weapons, Abandoned Chemical Weapons, Toxic Chemicals or Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, all goods and any conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other goods which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter VI relating to such Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, Old Chemical Weapons, Abandoned Chemical Weapons, Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine; and

(d) detain and search, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter VI relating to such Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, Old Chemical Weapons, Abandoned Chemical Weapons, Toxic Chemicals or Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine: Provided that if such subordinate officer has reason to believe that search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such industry, building, conveyance or place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate superior officer.

24. Power of seizure and arrest in public places.-Any subordinate officer to the enforcement officer as is authorised in section 23 may: (a) seize, in any public place or in transit, any goods, in relation to which he has reason to believe an offence punishable under Chapter VI has been committed, and, along with such goods, any conveyance liable to confiscation under this Act, and any document or goods which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter VI relating to such goods;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter VI, and, if such person has any Toxic Chemical or Precursor or any Discrete Organic Chemical phosphorous, sulphur or fluorine in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. including Discrete Organic Chemicals containing elements of Explanation.-For the purposes of this section, the expression "public place" includes any public conveyance, shop, hotel or other place intended for use by, or accessible to, the public.

25. Procedure where seizure of goods liable to confiscation not possible: (1) Where it is not practicable to seize any goods which are liable to confiscation under this Act, any officer authorised under section 23 may serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

(2) For effecting seizure and confiscation, the owner, the plant operator and other officials of the facility shall provide all assistance with regard to safety in handling of goods.

26. Power to stop and search conveyance: Any subordinate officer authorised under section 23 may, if he has reason to suspect that any conveyance is, or is likely to be, used for the transport of any goods in respect of which he suspects that any provision of this Act has been, or is being, or is likely to be, contravened at any time, stop such conveyance, or in the case of an aircraft compel it to land and-

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods in the conveyance;

(c) if it becomes necessary to stop the conveyance, he may use all lawful means for stopping it.

27. Conditions under which search of persons be conducted: (1) When any subordinate officer authorised under section 23 or any subordinate officer exercising power in pursuance of sub-section (3) of section 22 is about to search any person under the provisions of section 22 or section 23 or section 24, he shall, if such person so requires, take such person without unnecessary delay to the nearest enforcement officer or the officer authorising such search or the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the officer or the Magistrate referred to in sub-section (1).

(3) The officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

28. Provisions of Act 2 of 1974 to apply to arrests, searches and seizures: The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act. 29. Disposal of persons arrested and goods seized. 29. Disposal of persons arrested and goods seized.-

(1) Any officer arresting a person under section 22 or section 23 or section 24 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and goods seized under warrant issued under sub-section (1) of section 22 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and goods seized under sub-section (2) of section 22 or section 23 or section 24 shall be forwarded without unnecessary delay to- (a) the officer in charge of the nearest police station; or (b) the officer empowered under section 30.

(4) The authority or officer to whom any person or goods is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or goods.

30. Power to invest officers of the National Authority, etc., with powers of an officer in charge of a police station: (1) The Central Government may, after consultation with the State Government, by notification published in the Official Gazette, invest any officer of the National Authority with the powers of an officer in charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of gazetted rank or any class of such officers with the powers of an officer in charge of a police station for the investigation of the offences under this Act.

31. Police to take charge of goods seized and delivered: An officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all goods seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such goods to the police station or who may be deputed for the purpose, to affix his seal to such goods or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer in charge of the police station.

32. Report of arrest and seizure.-Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate superior officer. 33. Liability of Toxic Chemicals, Precursors and conveyance to confiscation.

33. Liability of Toxic Chemicals, Precursors and conveyance to confiscation: (1) Whenever any offence punishable under Chapter VI has been committed, the goods or in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any Toxic Chemical or Precursor lawfully produced, imported into India, transported, used, purchased or sold along with, or in addition to, any goods which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any goods liable to confiscation under sub-section (1), is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any conveyance used in carrying any goods liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the conveyance proves that it was used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance and that each of them had taken all reasonable precautions against such use.

34. Confiscation of goods used for concealing Toxic Chemicals or Precursors: Any Goods used for concealing any goods which is liable to confiscation under this Act shall also be liable to confiscation. Explanation.-In this section, "Goods" includes conveyance as a means of transport. 35. Confiscation of sale proceeds of goods.

35. Confiscation of sale proceeds of goods: Where any goods is sold by a person having knowledge or reason to believe that the goods is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

36. Procedure in making confiscation: (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any goods seized under this Act is liable to confiscation and, if it decides that the goods is so liable, it may order confiscation accordingly.

(2) Where any goods seized under this Act appears to be liable to confiscation under section 33 or section 34 or section 35, but the person who committed the offence therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of any goods shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

37. Power to call for information, etc: Any subordinate officer authorised under section 23 may, during the course of any inquiry in connection with the contravention of any provision of this Act,-

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made or direction issued thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

38. Information as to commission of offences: No enforcement officer, subordinate officer or officer of the National Authority or the State Government or officer subordinate to such officer as is mentioned in sub-section (2) of section 22 acting in exercise of powers vested in him under any provision of this Act or any such order made thereunder shall be compelled to say when he got any information as to the commission of any offence.

OFFENCES AND PENALTIES

39. Punishment for failure to register: Whoever-

(a) before the commencement of this Act had been engaged in development, production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine and continues to be, after such commencement, so engaged; or

(b) after the commencement of this Act produces, processes, acquires, consumes, transfers, imports, exports or uses any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or produces any Discret Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, without complying with the provisions of sub-section (1) or, as the case may be, sub-section (2) of section 18 shall, unless his name is registered in accordance with the provisions of that section, be punishable with fine which may extend to one lakh rupees, and in the case of continuing default, with a further fine which may extend to one lakh rupees every day during which such default continues after conviction for the first default or with imprisonment for a term which may extend to three years, or w th both.

40. Punishment for contravention in relation to development, production, etc., of Chemical Weapons or riot control agents, etc: Whoever, in contravention of any provision of this Act, develops, produces, otherwise acquires, stockpiles, retains or uses Chemical Weapons, transfers, directly or indirectly, any Chemical Weapon to any person, uses any riot control agent as a method of warfare, engages in any military preparations to use Chemical Weapons, assists, encourages or induces in any manner any person to engage in the use of any riot control agent as a method of warfare or any other activity prohibited to a State Party under the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

41. Punishment for contravention in relation to Toxic Chemicals, etc., listed in Schedule 1: Whoever, in contravention of any provision of this Act, produces, acquires, retains, transfers or uses any Toxic Chemical or Precursor listed in Schedule 1 in the Annex on Chemicals to the Convention for the purposes prohibited to a State Party under the Convention or transfers any Toxic Chemical or Precursor listed in Schedule 1 in the Annex on Chemicals to the Convention outside India, shall be punishable wit imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

42. Punishment for contravention in relation to transfer of Toxic Chemicals, etc., listed in Schedule 2: Whoever, in contravention of any provision of this Act transfers to or receives from ⁷[a State which is not a State Party or any person] who is not a citizen of a State Party any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

43. Punishment for contravention in relation to export or import of Toxic Chemicals, etc: Whoever, in contravention of any provision of this Act, exports from or imports into India any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

44. Punishment for contravention in relation to disclosure of confidential information: Whoever, in contravention of any provision of this Act, divulges any confidential information obtained by the National Authority from any declaration or return furnished or any statement made, information supplied to, or obtained by, an enforcement officer during the course of any inspection carried out under the provisions of this Act to any other person, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

45. Punishment for contravention in relation to denial of access: Whoever does not comply with the obligations related to inspection activity under the Convention or delays or obstructs any Inspection Team or Inspector or enforcement officer or Observer in performance of his functions or wilfully

removes or tampers with any installed on site instrument or any Approved Equipment shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

46. Punishment for contravention in relation to failure to furnish information, declaration or return: Any person who being required by or under this Act to furnish any-

(a) information;

(b) declaration; or

(c) return, fails to furnish such information, declaration or return shall be punishable with fine which may extend to one lakh rupees, and in the case of continuing default, with a further fine which may extend to one lakh rupees for every day during which such default continues after conviction for the first such default, or with imprisonment for a term which may extend to three years, or with both.

47. Offence punishable under section 46 to be cognizable: Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under section 46 shall be cognizable. 48. Offences by companies. 48. Offences by companies. **2 of 1974**

(1) Where any offence under Chapter VI has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter VI has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner of the firm.

49. Prosecution of offences: No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or the authority notified by the Central Government, in the Official Gazette, to be competent to sanction

50. Appeals from the decision of the National Authority: (1) Any person aggrieved by any direction of the National Authority issued under section 10 may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed there for if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the direction appealed against and by such fee as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed: Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

51. Provisions of Convention not to apply to certain mixtures: Notwithstanding anything contained in this Act, the provisions of the Convention in so far as they relate to-

(a) restriction or reporting;

(b) inspection; or

(c) declaration and verification, shall not apply to any mixtures containing such concentration of any Chemicals specified in Schedule 2 or Schedule 3 in the Annex on Chemicals to the Convention as the Central Government may, by notification in the Official Gazette, specify.

CHAPTER VII MISCELLANEOUS

52. Protection of action taken in good faith: No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or of a State Government or the Chairperson, Directors, officers and other employees of the National Authority or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

53. Power to delegate: (1) The Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power to make rules under section 56) as it may deem necessary or expedient, to the National Authority or the Committee referred to in section 11.

(2) The State Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act, as it may deem necessary or expedient, to any authority or officer of that Government.

54. Officers to be public servants: The Chairperson, Directors, officers and other employees of the National Authority or any other person exercising any powers or discharging any functions under this Act shall be deemed to be the public servant within the meaning of section 21 of the Indian Penal Code.

55. Removal of difficulties: If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

56. Power to make rules: (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the Directors under sub-section (3) of section 6, and the salary and allowances payable to and other terms and conditions of service of officers and other employees of the National Authority under sub-section (4) of that section;

(b) other functions of the National Authority that may be prescribed under clause (v) of sub-section (2) of section 7;

⁷[(b) the criteria which the officers are required to fulfil under sub-section (1) of section 9];

⁹[(c) the exceptions and thresholds under sub-section (1) and (2) of section 18, the form of application, the particulars to be contained in the application form, the form of certificate of registration, the manner of making application, the amount of fee payable, the procedure to be followed in granting or cancelling certificate of registration under sub-section (3) of section 18, the terms and conditions for granting a certificate of registration under sub-section (4) of section 18, the period for which a renewed certificate of registration may be issued and the amount of fee payable therefor under sub-section (5) of section 18, and information, declaration or return to be furnished under sub-section (6) of that section;]

(d) the time within which appeal may be preferred under sub-section (1) of section 50;

(e) the form for making appeal and the fee to be accompanied therewith under sub-section (3) of section 50;

(f) the procedure for disposing of appeal under sub-section (4) of section 50;

(g) any other matter which is to be, or may be, prescribed.

(3) Every notification issued under sub-section (2) of section 3, any declaration made under section 5, every order made under section 55 and every rule made under section 56 shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, order or rule or both Houses agree that the notification, order or rule should not be issued or made, the notification, order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, order or rule.

Footnotes:

1. 1st July, 2005(except sections 18 and 39), *vide* Notification No. S.O.818 (E), dated the 14th June, 2005, *see* Gazette of India, Extraordinary, 2010, Pt.II, s.3, sub-section (i).
2. Ins. by Act 36 of 2012, s. 2 (w.e.f.23-11-2012).
3. Subs. by s. 3, *ibid* for section 16 (w.e.f.23-11-2012).
4. Subs. by s. 4, *ibid* for "Every person who is" (w.e.f.23-11-2012).
5. Subs. by s. 4, *ibid* for "No person, who after the commencement of this Act" (w.e.f. 23-11-2012).
6. Ins. by s. 4, *ibid* (w.e.f. 23-11-2012).
7. Subs. by s. 5, *ibid* for "any person" (w.e.f. 23-11-2012).
8. Ins. by s. 6, *ibid* (w.e.f. 23-11-2012).
9. Subs. by s. 6, *ibid* for clause (c) (w.e.f. 23-11-2012).