

## CHAPTER V

### INSPECTION, SEARCH, SEIZURE AND FORFEITURE

**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 testing 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 authorisation.**—(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 authorisation.**—(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 subsection (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 including Discrete Organic Chemicals containing elements of 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.

*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.**—(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.**—(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.**—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 to enforcement 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.