

CHAPTER VI
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 Discrete 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 with 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 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.

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 ¹[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.

¹ . Subs. by Act 36 of 2012, s. 5, for “any person” (w.e.f. 23-11-2012).

47. Offence punishable under section 46 to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence punishable under section 46 shall be cognizable.

48. Offences by companies.—(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 prosecution of the offences under this Act.

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 therefor 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.