



India's national legislation on preventing the proliferation of Weapons of Mass Destruction

A presentation by

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India's corpus of laws dealing with activities relevant to preventing proliferation of WMDs and their means of delivery

Includes, *inter alia* :

- The Atomic Energy Act, 1962
- The Customs Act, 1962
- The Foreign Trade (Development and Regulation) Act, 1992
- The Chemical Weapons Convention Act, 2000
- The Unlawful Activities (Prevention) Amendment Act, 2004

And, most pertinently:

- >> The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
- >> Specifically enacted to fulfill India's obligations pursuant to UNSCR 1540, it criminalizes WMD related proliferation activities by non-State actors.

See: IAEA INFCIRC/647 of 29 June 2005

Some salient features of India's WMD Act

Overarching integrated legislation to translate effectively India's commitment to prevent proliferation of WMDs. Besides the prohibitions mandated by UNSCR 1540, the WMD Act fulfills India's obligations pursuant to UNSCR 1540 by, *inter alia*:

- Updating the extant system of export controls – dating to 1992 -- by introducing transit and trans-shipment controls, and end-use based controls (“catch-all”) – the WMD Act prohibits the export of *any* goods or technology if the exporter knows that it is intended to be used in a WMD programme.
- Prohibiting brokering across-the-board for any transaction -- for even those that are only regulated, but not prohibited, under the Act. Applies also to foreigners resident in India.
- Defining ‘technology’ by reference to *the content of information* - rather than by the means of its transmission. This definition of ‘technology’ is identical in the WMD Act and in Indian XpC regulations under the FTDR and AE Acts.

... some salient features

- 'Transfer' controls regulate the flow of sensitive and dual-use 'technology' from India, or by Indian citizens resident abroad. These controls apply also to "deemed exports", ie to the flow of prohibited or controlled goods and technology to foreigners while in India.
- Provisions apply to citizens of India outside India; Indian companies with branches or subsidiaries abroad; persons in the service of the Government of India, as well as to foreigners while in India.
- The WMD Act is in addition to the extant system of legal and administrative controls. Importantly, whenever any offence is punishable under the WMD Act as well as under any other Act in force, the offender is liable to be punished under that Act which imposes the harsher punishment.

Some juridical issues that might arise

➤ **Appropriate sentence:** The 'market value' of a technology – even if this is assessable - is no indicator of its contribution to the illicit acquisition of WMD capability. Its technological “crucialness” – as assessed by experts in the subject – to such acquisition needs to be accepted as the basis of injury to national security.

>> Likewise, an instance of unauthorised export of – say - a Trigger List item could cast aspersions on not only India's reputation, but also her ability to import that item needed for her nuclear power programme. How is this kind of damage to be assessed for determining the appropriateness of sentence?

➤ **Evidence:** In cases of activities proscribed by the WMD Act, prosecutory evidence is likely to have been garnered by intelligence sources and methods, including foreign ones. Issues of admissibility of such evidence are likely to arise in such cases.

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