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CENTRAL LEGISLATION

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I INTRODUCTION

THIS YEAR the main focus of central legislation seems to be on education, especially higher education. To cope up with the liberalization policies, it is necessary to equip the new generation with sharpest tools of education. With this aim, many new central universities have been created through Acts of Parliament and state universities have been conferred the status of central universities. Besides, all states in the North East can now boast of one central university each.

Further, the National Tax Tribunal Act, 2005 was amended so as to be in tune with the judgment in *Sandeep Goyal*¹ where this Act was constitutionally challenged. The Administrative Tribunals (Amendment) Act, 2006, has raised the retirement age of chairman of administrative tribunals from 65 to 68 years, with a view to attract most deserving persons to this post. Another major field where considerable amendments were made is in the field of banking and trade sector. All statutes and amendments were intended to expedite the financial development and to aid the process of globalization.

II BANKING AND TAXATION

The Taxation Laws (Amendment) Act, 2007

The Taxation Laws (Amendment) Act, 2007² was enacted to further amend³ the Central Sales Tax Act, 1956 and the Additional Duties of Excise

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1 *Sandeep Goyal v. Union of India & others*, T C(Civil) No. 116/2006 S C order dated 09/01/2007 Act No. 16 of 2007.

3 The Act carries out amendments in the Income-tax Act, 1961, the Central Excise Act, 1944, the Customs Act, 1962, and the Customs Tariff Act, 1975 with the object of rationalizing and simplifying procedures, widening of tax base and plugging loopholes leading to leakage of revenue. The Act also makes amendments in the Customs Act, 1962, and Central Excise Act, 1944 which, *inter-alia*, provides an optional scheme for settlement of disputes at the earliest and encouraging voluntary payment of tax dues, simplified and time bound customs assessment in case of contrary claims by assessee by issue of speaking order within 15 days of assessment to provide certainty and room for appeal. Publication of names of tax evaders, provisional attachment of property during the pendency of proceedings have been introduced as measures to curb evasion of customs and central excise duty and to facilitate recovery of amounts due as revenue to the government.



(Goods of Special Importance) Act, 1957. The salient features of the Taxation Laws (Amendment) Act, 2007 are to amend sub-sections (1), (2) and (4) of section 8. Consequential amendments are made to sections 6, 7, 9, 10 and 10A of the Central Sales Tax Act, 1956. Section 14 has also been amended in order to omit tobacco and tobacco products from the purview of “declared goods”. The amendment Act has omitted section 4 and the second schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and has amended the first schedule.

As per this amendment the rate of central sales tax on inter-state sale to registered dealers (against Form-C) shall stand reduced from 4% to 3% or the rate of value added tax (VAT) applicable in the state of the selling dealer, whichever is lower. The rate of central sales tax on inter-state sale other than sale to registered dealers shall be the rate of VAT applicable in the state of the selling dealer. The rate of central sales tax on inter-state sale to government departments shall also be the rate of VAT applicable in the state of the selling dealer, indicated above. The facility of inter-state purchases by government departments against Form-D has been withdrawn. Enabling provisions have been made for the states to levy VAT on tobacco. Tobacco has been dropped from the first schedule of the Additional Duties of Excise (Goods of Special Importance) Act as also from the list of declared goods, to enable the states to levy VAT on tobacco, at rate higher than 4%.

The Banking Regulation (Amendment) Act, 2007

The Banking Regulation (Amendment) Act, 2007⁴ was enacted to amend section 24 of the Banking Regulation Act, 1949, with a view to managing the pressure on liquidity. The amendment empowers the Reserve Bank of India (RBI) to change the floor of the statutory liquidity ratio (SLR), the minimum limit that banks have to keep in the form of approved bonds, cash and gold. As per this stipulation the RBI by a notification⁵ made it mandatory to maintain a uniform SLR of 25 % on their total deposits in the form of liquid assets, comprising of cash, gold and approved securities, mostly government bonds. With this amendment, the RBI gained more operational flexibility in the conduct of monetary policy by way of being at liberty to decide the SLR.

The State Bank of India (Subsidiary Banks Laws) Amendment Act, 2007

The State Bank of India along with its subsidiaries is the largest nationalized bank chain in India. The State Bank of Saurashtra Act, 1950, the State Bank of Hyderabad Act, 1956, and the State Bank of India (Subsidiary Banks) Act, 1959 have been in force for more than four decades. The said three Acts contained provisions regarding constitution of the State Bank of Saurashtra, the State Bank of Hyderabad and other subsidiary banks of the State Bank of India (being the State Bank of Patiala, the State Bank of Bikaner

4 Act No. 17 of 2007.

5 Notification No. DBOD. Ret. BC.61/12.02.221/2007-08 dated February 13,2008.



and Jaipur, the State Bank of Indore, the State Bank of Mysore and the State Bank of Travancore), their capital, management and control and other connected matters.

There are more than 28 lakhs private shareholders in (other than the State Bank of India) the State Bank of Patiala, the State Bank of Bikaner and Jaipur, the State Bank of Indore, the State Bank of Mysore and the State Bank of Travancore. These shareholders were facing difficulties due to certain restrictions imposed under the State Bank of India (Subsidiary Banks) Act, 1959. The difficulties being, lack of dematerialization facility of the shares; free transferability; restriction on individual holdings of shares; and voting rights; etc. The present amendment Act intends to remove these difficulties and ensure the overall smooth functioning of the banking sector and thereby expedite the speedy development of the country.

The amendment allows the subsidiary banks to increase their share capital and to issue share certificates thereby making more money available to the banking sector.

The Securities Contracts (Regulation) Amendment Act, 2007

The Securities Contracts (Regulation) Amendment Act, 2007⁶ has amended sections 2, 23 and 31 and a new section 17A has been inserted in the Securities Contracts (Regulation) Act, 1956. This newly added provision intends to give more confidence and security to the investors.

III CONSTITUTIONAL LAW

The Constitution (Scheduled Castes) Order (Amendment) Act, 2007⁷

Section 2 of the Constitution (Scheduled Castes) Order (Amendment) Act, 2007 has amended the schedule to the Constitution (Scheduled Castes) Order, 1950, and has substituted certain entries in parts V, VIII, IX, X, and XIII. The states of Haryana, Kerala, Madhya Pradesh, Maharashtra, Punjab and Chhattisgarh are the intended beneficiaries of this amendment.

Thus, 'Batwal' has been substituted by 'Barwala'⁸; 'Megh' by 'Meghwal';⁹ 'Thandan' by 'Thandan' (excluding Ezhuvass and Thiyyas who are known as Thandan, in the erstwhile Cochin and Malabar areas) and Carpenters (who are known as Thachan, in the erstwhile Cochin and Travancore State);¹⁰ 'Bagri, Bagdi' by 'Bagdi, Bagdi (excluding Rajput, Thakur sub-castes among Bagri, Bagdi)'.¹¹ Entry 8 of part X has been substituted with 'Basor, Burud, Bonsor, Bansodi, Basod'; entry 11 with 'Bhambi, Bhambhi, Asadaru, Asodi, Chamadia, Chamar, Chamari, Chambhar, Chamgar, Haralayya, Harali, Khalpa,

6 Act No.27 of 2007.

7 Act No. 31 of 2007.

8 Entry 5 of part V.

9 Entry 24 of part V.

10 Entry 61 of part VIII. This substitution is made by s.2(a) of the Act.

11 Entry 2 of part IX.



Machigar, Mochigar, Madar, Madig, Mochi, Telegu Mochi, Kamati Mochi, Ranigar, Rohidas, Nona, Ramnami, Rohit, Samgar, Samagara, Satnami, Surjyabanshi, Surjyaramnami, Charmakar, Pardeshi Chamar'; entry 12 with 'Bhangi, Mehtar, Olgana, Rukhi, Malkana, Halalkhor, Lalbegi, Balmiki, Korar, Zadmali, Hela'; and in PART XIII.-Orissa, entry 19, with 'Chamar, Chamara, Chamar-Ravidas, Chamar-Rohidas, Mochi, Muchi, Satnami'; and entry 42, substituted by 'Kandra, Kandara, Kadama, Kuduma, Kodma, Kodama'. In part XIV Punjab, after entry 38, 'Mahatam, Rai Sikh' has been inserted; and in part XXIII.- Chhattisgarh, after entry 43, 'Turi' has been added.

Thus, a good number of deprived groups who were not included in the earlier scheduled castes order, are now recognized as scheduled castes and thereby enabling them to avail the special protection and reservation in employment.

IV CHILD RIGHTS

The Commission for Protection of Child Rights (Amendment) Act, 2006¹²

The Commission for Protection of Child Rights (Amendment) Act, 2006 was enacted to amend the Commission for Protection of Child Rights Act, 2005. Section 2 of the present Act has amended section 4 of the principal Act. The words "Minister in-charge of the Ministry of Human Resource Development" have been substituted by "Minister in-charge of the Ministry or the Department of Women and Child Development". It is pertinent to note that Parliament had enacted the Prohibition of Child Marriage Act, 2006,¹³ during the year by repealing the Child Marriage Restraint Act, 1929.¹⁴

V EDUCATION

The Central Educational Institutions (Reservation in Admission) Act, 2006

The Central Educational Institutions (Reservation in Admission) Act, 2006¹⁵ provides for reservation in admission to students belonging to the scheduled castes, the scheduled tribes and the other backward classes of citizens, in certain central educational institutions which are established, maintained or aided by the central government.¹⁶

12 Act No. 4 of 2007.

13 Act No. 6 of 2007.

14 The Sarada Act, 1929.

15 Act No. 5 of 2007 and received assent on 3.1.2007.

16 The provisions of s. 3 of this Act shall not apply to – (a) a Central Educational Institution established in the tribal areas referred to in the Sixth Schedule to the Constitution; (b) the institutions of excellence, research institutions, institutions of national and strategic importance specified in the Schedule to this Act; provided that the Central Government may, as and when considered necessary, by notification in the Official Gazette, amend the Schedule; (c) a Minority Educational Institution as defined in this Act; and (d) a course or programme at high levels of specialization, including at the post-doctoral level, within any branch of study or faculty, which the Central Government may, in consultation with the appropriate authority, specify. See s. 4 of the Act.



As per section 3 of the Act reservation of seats in admission to these institutions shall be as under: (i) out of the annual permitted strength in each branch of study or faculty, 15% seats shall be reserved for the SCs; (ii) 7.5% for the STs; and (iii) 27% for the OBCs.

Every central educational institution under this Act shall, with the prior approval of the appropriate authority, increase the number of seats over and above its annual permitted strength, excluding those reserved for SCs, STs and OBCs, provided it is not less than the number of such seats available for the academic session immediately preceding the date of the coming into force of this Act.¹⁷

Any central educational institution, with the permission of the central government, may be permitted to increase the annual permitted strength over a maximum period of three years beginning with the academic session following the commencement of this Act. The extent of reservation for the OBCs shall accordingly be limited in such manner that the number of seats available to them for each academic session is commensurate with the increase in the permitted strength for each year.¹⁸

Section 4(b) provides for 18 institutions of excellence, including the 10 constituent units of Homi Bhabha National Institute. These institutions have been kept out of the purview of this Act. Central educational institutions established in the tribal areas referred to in the Sixth Schedule to the Constitution¹⁹ and minority educational institutions²⁰ are also excluded from the purview of section 3 of the Act. The central government has been empowered to specify, after consultation with the concerned appropriate authority, a course or programme at high levels of specialization, including at post doctoral level, to be excluded from the purview of section 3 of the Act.²¹

Minority educational institution under the Act means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution and so declared by an Act of Parliament or by the central government or declared as a minority educational institution under the National Commission for Minority Educational Institutions Act, 2004. 'Other Backward Classes' means the class or classes of citizens who are socially and educationally backward, as determined by the central government.

National Institute of Pharmaceutical Education and Research (Amendment) Act, 2007

National Institute of Pharmaceutical Education and Research (Amendment) Act, 2007²² was enacted to fulfil the demand from

17 S.5(1).

18 S. 5(2).

19 S. 4 (a).

20 S. 4(c).

21 As per s. 4(d).

22 Act No. 19 of 2007 and received assent on 3.4.2007.



pharmaceutical industry as well as from various states to set up more national institutes of pharmaceutical education and research (NIPER), to meet the shortage of highly skilled manpower in pharmaceutical industry. The National Institute of Pharmaceutical Education and Research (Amendment) Act, 1998 dealt exclusively with the NIPER, Mohali, Punjab, which is the only institute of its kind in the country. The present amendment Act amends sections 3 and 4 and empowers the central government to establish similar institutes in different parts of the country. The newly inserted section 4-A enables such institutes to establish one or more centers in different locations within its jurisdiction, with prior approval of the central government.

English and Foreign Languages University Act, 2006

The purpose of enacting the English and Foreign Languages University Act, 2006²³ is to establish and incorporate a teaching university for promotion and development of English and other foreign languages and their literature. The English and Foreign Languages University at Hyderabad would be the 24th central university established by a central Act. Section 4 of the Act has provided dissolution of the Central Institute of English and Foreign Languages, a society registered under the Hyderabad Societies Registration Act, 1850. The Act has given power to transfer to and vest in the said university all properties and rights of the said society.

The National Institutes of Technology Act, 2007

National Institutes of Technology Act, 2007²⁴ came into effect from 15.08.2007. Earlier, on 14.05.2003 the central government had taken over 17 institutions and rechristened them as National Institutes of Technology (NITs). Another three new institutes, namely, Bihar Engineering College, Patna, Government Engineering College, Raipur and Tripura Engineering College, Agartala were added to the list of NITs on 28.10.2004, 1.12.2005 and 1.4.2006, respectively. Thus, the total number of NITs had gone up to 20 by the year 2006.²⁵ These institutes are expected to be at par

23 Act No. 7 of 2007

24 Act No. 29 of 2007.

25 The list of NITs include: Motilal Nehru National Institute of Technology, Allahabad; National Institute of Technology, Patna; Maulana Azad National Institute of Technology, Bhopal; National Institute of Technology, Raipur; National Institute of Technology, Calicut; National Institute of Technology, Rourkela; National Institute of Technology, Durgapur; National Institute of Technology, Silchar; National Institute of Technology, Hamirpur; National Institute of Technology, Srinagar; Malaviya National Institute of Technology, Jaipur; Sardar Vallabhbhai National Institute of Technology, Surat; Dr. B.R. Ambedkar National Institute of Technology, Jalandhar; National Institute of Technology Karnataka, Surathkal; National Institute of Technology, Jamshedpur; National Institute of Technology, Tiruchirappalli; National Institute of Technology, Kurukshetra; National Institute of Technology, Warangal; Visvesvaraya National Institute of Technology, Nagpur and National Institute of Technology, Agartala.



with other national level technical institutes like IITs, IISc, etc. and be able to fulfil the demand of high quality undergraduate and postgraduate level of education in engineering and technology.

A board of governors²⁶ responsible for the general superintendence, direction and control of the institute has been constituted in all NITs.²⁷ Quality improvement programmes for faculties are to be undertaken by these institutes by visiting institutions within the country and abroad.

The Indira Gandhi National Tribal University Act, 2007²⁸

The Indira Gandhi National Tribal University Act, 2007 has been enacted to encourage studies and research in the art and culture of tribal communities and promote education among them. The Act intends to establish and incorporate a teaching and affiliating university at Amarkantak in Madhya Pradesh to facilitate and promote avenues of higher education and research facilities for Indian tribal population.

Other University Acts

The Rajiv Gandhi University Act, 2006²⁹ has been enacted to establish a central university in Arunachal Pradesh. By this Act, the existing state university in Arunachal Pradesh has been converted into central university. The Sikkim University Act, 2006³⁰ and the Tripura University Act, 2006³¹ have established central universities one each in Sikkim and Tripura, respectively. The Mizoram University Act, 2000 has been amended by the Mizoram University (Amendment) Act, 2007³² and a new section 9A has been inserted to provide for the appointment of the Governor of the State of Mizoram as the Chief Rector of the University.

VI ELECTRICITY LAW

The Electricity (Amendment) Act, 2007

Electricity Act, 2003 amended by the Electricity (Amendment) Act, 2007³³ provides that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

26 S.11.

27 S.13.

28 Act No. 52 of 2007.

29 Act No. 8 of 2007.

30 Act No. 10 of 2007.

31 Act No. 9 of 2007.

32 Act No. 24 of 2007.

33 Act No. 26 of 2007.



VII MEDIA LAW

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007³⁴

Liberalization policy has opened the gate to foreign as well as inland electronic media. It has, therefore, become necessary to protect the interest of the state by avoiding telecasting/broadcasting misinformation in the interest of the integrity and sovereignty of the country. The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 has put a break on the media by making it compulsory for all channels to mandatorily transmit certain sports programmes with the Prasar Bharati, the state sponsored channel.

The Cable Television Networks (Regulation) Amendment Act, 2007³⁵

Cable Television Networks are regulated by the Cable Television Networks (Regulation) Act, 1995. By the present amendment Act, section 8 of the principal Act has been amended. As a result, it is mandatory for a cable television network operator to re-transmit the specified channels operated by or on behalf of Parliament. It is also mandatory for every cable television operator to re-transmit at least two *Doordarshan* terrestrial channels and one regional language channel of the state on the prime band and in satellite mode on frequencies other than those carrying terrestrial frequencies. Further, these channels should be re-transmitted without any deletion or alteration of any programme transmitted on such channels. This amendment is made in the public interest and on public demand.

VIII LABOUR LAW

The National Rural Employment Guarantee (Extension to Jammu and Kashmir) Act, 2007³⁶

The National Rural Employment Guarantee Act, 2005 was not extended to Jammu and Kashmir. As the Act seemed to be working effectively in other states, it was considered appropriate to extend it to the State of Jammu and Kashmir, and hence the amendment.

The Apprentices (Amendment) Act, 2007³⁷

The Apprentices Act, 1961 provides for regulation and control of training of apprentices. Section 3-A of the Act provides for reservation of training places for the SCs and STs. But there was no such provision for OBCs.

As per second proviso of sub-section 3 of section 8, the flexibility up to 20 per cent, in the matter of engagement of apprentices in a trade was available, while the overall quota fixed remained the same. This amendment Act provides for flexibility up to 50 per cent in the matter of engagement of

34 Act No. 11 of 2007.

35 Act No. 25 of 2007.

36 Act No. 23 of 2007.

37 Act No. 36 of 2007.



apprentices in a trade without altering the quota system.

Sub-section 1 of section 10 of the principal Act provided that a trade apprentice who is undergoing practical training shall, during the period of such training, be given a course of related instruction which shall be appropriate to the trade approved by the central government in consultation with the Central Apprenticeship Council, with a view to give the trade apprentice such theoretical knowledge as he needs in order to become a fully qualified skilled craftsman. This training was to be organized by the employers as and when required by the appropriate government and reimbursements were being given to the employers. This reimbursement process was found to be cumbersome. By amending sub-section 2 of section 10, the employers are now made duty bound to provide such related instruction, as and when required by the appropriate government and the cost of such training is also to be borne by the employers themselves.

IX TRANSPORT AND WAREHOUSING LAWS

The Inland Vessels (Amendment) Act, 2007³⁸

The present Act amends the Inland Vessels Act, 1917 with a view to effectively utilize the technological development in improving the water transport facilities to suit the needs of the liberalized trade policies. These amendments are expected to be a boon for the tourism sector.

Temporary permits are to be issued to the willing operators after a survey. Section 54-C of the principal Act was completely substituted through this amendment. To prevent and control pollution and to protect inland water, a new chapter, viz., chapter VI-AB has been inserted in the Act, to meet the international standards of emission control. This Act is an environment friendly legislation.

The Warehousing (Development and Regulation) Act, 2007³⁹

This Act is made with the object to make provisions for the development and regulation of warehouses, negotiability of warehouse receipts, establishment of a warehousing development and regulatory authority and for matters connected therewith or incidental thereto. The Act has exempted negotiable warehouse receipts from stamp duty and has introduced electronic receipt. It has recognized electronic mails, speed post, etc. as an authorized form of communication to give notice to the holder or depositor.

Registration of warehouses⁴⁰ has been made compulsory, so as to enable them to issue negotiable warehouse receipts. Registration certificate from the concerned authority has been made a mandatory condition for operating a warehouse and for this purpose, a statutory authority called

38 Act No. 35 of 2007.

39 Act No. 37 of 2007.

40 S. 4 of the Act provides for the registration of warehouses.



warehousing and development authority has been established under the Act. The concerned authority has to be satisfied that the warehouse in respect of which the application has been made has adequate facilities and safeguards required to warehouse the goods of the nature specified in the application and the applicant satisfies the financial, managerial and other eligibility criteria and competence as may be prescribed. In the event of the registration being rejected the parties are to be given an opportunity of being heard.⁴¹ The authority is empowered to impose such terms and conditions before the registration certificate is issued. Each warehouse, including all branches, has to be endorsed in the registration certificate.

Liability has been imposed on the warehouseman, for loss of, or damage to, goods. He is expected to exercise such care and diligence as that of an owner in regard to the goods entrusted to his care. In case the goods are damaged or lost in spite of taking all care and precautions by the warehouseman due to unavoidable circumstances, the compensation equal to the value of goods at the time of their deposit shall be payable by him. However, if the goods are damaged or lost due to his negligence then, the compensation shall be equal to the value of goods plus the loss of profit to the holder of the receipt. The warehouseman shall not, however, be responsible for any loss, destruction, damage or deterioration of the goods delivered to him for storage attributable to circumstances such as *force majeure*, act of war, act of public enemies and the like.⁴²

It has been made mandatory on the part of the warehouseman to deliver the goods referred to in a negotiable receipt, to the holder of the receipt on demand made by him on his (a) satisfying the warehouse lien; (b) surrendering the receipt in case of non-negotiable receipt and surrendering the receipt with endorsements in case of negotiable receipt; and (c) acknowledging in writing the receipt of the goods. In case the warehouseman refuses or fails to deliver the goods despite such compliance, the burden of proof shall be on him to establish the existence of a lawful excuse for the refusal or failure.⁴³

The warehouseman is duty bound to keep records and accounts of warehouse business and make it available for inspection as and when required. The Act has provided certain special powers to the warehouseman to deal with perishable and hazardous goods. Since keeping such goods can cause deterioration in value or damage other goods, the warehouseman after giving notice, either to the holder or to the depositor, requiring that person to satisfy the lien on the goods, order him to remove them from the warehouse. If he does not do so the warehouseman is empowered to dispose off the goods stored in his warehouse, without any advertisement. After

41 Provisio to s.4.

42 S. 6 of the Act.

43 S. 7.



satisfying his lien, the balance amount, if any, is required to be deposited in a trust fund.

In certain circumstances, the warehouseman is empowered to dispose off the goods even without a notice, if he is satisfied on reasonable grounds that in the circumstances of the case giving such notice is likely to cause damage to the goods.

All warehouse documents are declared to be negotiable instruments and freely transferable, except those specifically mentioned as 'Non-negotiable'. It is not necessary that the person named in the warehouse document should claim the delivery of goods stored in the warehouse. Any person having possession of the warehouse receipt may negotiate by delivering the receipt provided the transferor has made an endorsement therein to the effect that he has transferred it for valuable consideration. In such cases, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when endorsement is made.⁴⁴

The general presumption in a dispute between an endorser of a negotiable warehouse receipt and his endorsee is that (a) the endorsement has been made voluntarily; (b) the endorsement has been made for full consideration; (c) the endorser had full legal title in the goods represented by the receipt; and (d) the endorsement has extinguished all the rights, title and interest of the endorser in the goods.⁴⁵

The Act has made provision for creation of a warehousing development and regulatory authority consisting of a chairperson and two other members, to monitor as a regulatory body and to ensure implementation of the provisions of this Act and promote orderly growth of the warehousing business. This authority is empowered to constitute a warehousing advisory committee to advise it on matters relating to the making of regulations under section 51 and make recommendations for effective implementation of the provisions of this Act. The committee is to consist of not more than 15 members excluding the members of the authority to represent the interests of commerce, industry, engineering, agriculture, consumers, organizations engaged in warehousing, quality control, preservation and research bodies.

Any person aggrieved by an order of the authority or any rules or the regulations made thereunder may prefer an appeal to such person or authority appointed by the central government within 60 days from the date of such order.⁴⁶ Section 43 describes what are the offences under the Act and provides severe punishments for them including fine up to one lakh rupees and/or imprisonment for a term of three years.

44 S. 14 of the Act.

45 S. 22.

46 S. 42.



The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2007⁴⁷

Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (the principal Act) prescribed certain specified warning including a pictorial depiction of skull and cross bones and such other warnings. But the present amendment Act has diluted this mandatory requirement by laying down that the pictorial warning need not be of the skull and cross bones, but any other picture as may be prescribed.⁴⁸

The Merchant Shipping (Amendment) Act, 2007⁴⁹

Due to liberalization and globalization, it has become necessary to amend the trade policies and the laws directly affecting the international trade, taking into consideration the safety and security of the consignments. The cheapest mode of transport being shipping, the present amendment Act intends to amend the Merchant Shipping Act, 1958 and the Indian Ports Act, 1908.

The amendment makes it mandatory for any person who is employed or engaged or works in any capacity on board a sea going ship to have a seafarer's identification card. All ships which are ordinarily engaged in the maritime navigation will come under the purview of this new section except war ships. This section is inserted to ensure the long pending demand from the seafarers who were exploited by the shippers.

Section 2 of the amendment Act amends the long title of the Merchant Shipping Act, 1958, by substituting for the word "registration", the words "registration, certification, safety and security".

Terrorism is one of the threats faced by the navigators in this modern world. Hence, their security and that of the ship has become very vital. "Security" means maritime security and includes any measure to protect ports or ships or any person or thing relating directly or indirectly to maritime navigation, (i) against terrorism, sabotage, stowaways, illegal migrants, asylum seekers, piracy, armed robbery, seizure or pilferage; and (ii) against any other hostile act or influence which threatens the security in the maritime transport sector, employed by the owners or operators or persons in charge of the vessels or management of port facilities, offshore installations and other marine organizations or establishments.⁵⁰

In order to ensure security of the ship and improve port facilities the amending Act in section 6 has inserted a new part IXB in the principal Act. This new part is applicable to the types of ships engaged on international voyages, namely, (i) passenger ships including high speed passenger craft; (ii) cargo ships including high speed craft of five hundred gross tonnage and

47 Act No.38 of 2007.

48 S. 2.

49 Act No. 40 of 2007.

50 S. 44A of the Act.



above; and (iii) mobile offshore drilling units. The central government may extend the application of this part to those ships which are exclusively engaged on coastal voyages.

Section 344L of the Merchant Shipping Act makes it mandatory for every Indian ship of one hundred gross tonnage and above and every Indian cargo ship of three hundred gross tonnage and above to obtain a ship identification number from the central government or the designated authority, as the case may be. This ship identification number should conform to the relevant scheme formulated by the International Maritime Organization. All certificates issued under this Act and all certified copies thereof should contain this ship identification number. Every Indian ship is to be provided with such security system as may be prescribed.

The amendment Act has inserted a new section 68D after section 68C of the Indian Ports Act, 1908, which mandates that a port facility in India should comply with all the requirements contained in chapter IXB of the Merchant Shipping Act, 1958 or the rules made thereunder.

The Carriage by Road Act, 2007⁵¹

The present Act has repealed the Carriers Act, 1865, which dealt with transportation of goods by road. The object of this Act is to provide for the regulation of common carriers, limiting their liability and declaration of value of goods delivered to them to determine their liability for loss of, or damage to, such goods occasioned by the negligence or criminal acts of themselves, their servants or agents and for matters connected therewith or incidental thereto. Contravention of the provisions of the Act attracts penalization and suspension or even cancellation of the registration itself.

Section 3 of the Act strictly prohibits persons to engage in business of a common carrier unless he has been granted a certificate of registration. The registering authority having jurisdiction in the area in which the applicant resides or has his principal place of business is empowered to act as the registering authority. Certificate of registration should contain the name of place of the head office and each of its branches.

Section 4(7) mandates the holder of a certificate of registration to: (a) maintain a register in such form and manner as may be prescribed; (b) in case of shifting the main office mentioned in the certificate of registration, to submit an application to the registering authority which granted the certificate of registration; (c) submit to the registering authority under whose jurisdiction the main office is located and the transport research wing of the ministry or department of the central government dealing with road transport and highways such information and return as may be prescribed within 120 days after the 31st day of March every year; (d) display at a prominent place in its main office and in each branch office, a certificate of

51 Act No. 41 of 2007.



registration in original or certified copy thereof attested by the concerned registering authority, a notary or a gazetted officer of the central or state government.

Realizing that one of the main reasons for road accidents is overloading of goods by the transporters, the present Act has incorporated a provision strictly prohibiting overloading.⁵²

Where a complaint is received by the registering authority against a common carrier from a consignor in respect of non-issuance of receipt of goods; non-disclosure of the whereabouts of the goods in transit when asked by the consignor or consignee; detention of goods for delivery without valid reasons; demand for unreasonable additional charges at the time of delivery, which were neither disclosed nor agreed upon between the consignor and the consignee earlier; non-payment of charges agreed and payable to truck-owners, it may give a notice by registered post or through electronic media or by any other verifiable means to the holder of certificate of registration to rectify the same within 30 days of such notice. In case such holder fails to do so, the authority is empowered to revoke certificate of registration for a period as may be prescribed under the rules.⁵³ This, no doubt, is a consumer friendly provision.

The state transport appellate tribunal constituted under sub-section (2) of section 89 of the Motor Vehicles Act, 1988 is the appellate authority under this Act. The aggrieved party may prefer an appeal within 60 days from the date of the order.

The state transport authority in respect of each state or union territory is required to submit annually to the ministry or department of the Central government dealing with road transport and highways a consolidated annual return giving the details of the goods carried by the common carriers in that state or the union territory.

The liability of the common carrier for loss of, or damage to any consignment, shall be limited to such amount as may be prescribed having regard to the value, freight and nature of goods, documents or articles of the consignment, unless the consignor or any person duly authorized in that behalf has expressly undertaken to pay higher risk rate fixed by the common carrier under section 11.

Carrying goods of dangerous or hazardous nature to human life, by a common carrier is prohibited except in accordance with such procedure and after complying with prescribed safeguards.⁵⁴ Further, the central government may specify the goods or class or classes of goods which shall

52 S. 4(8). A common carrier shall not load the motor vehicle beyond the gross vehicle weight mentioned in the registration certificate whose registration number is mentioned in the goods forwarding note or goods receipt, and the common carrier shall not allow such vehicle to be loaded beyond the gross vehicle weight.

53 S. 5.

54 As per s. 13.



not be carried by a common carrier.⁵⁵ Whoever contravenes the provisions relating to non-registration, carrying goods of dangerous or hazardous nature, or prohibited goods shall be penalized as per the Act.⁵⁶

A common carrier shall be responsible for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment entrusted to him for carriage, arising from any cause. However, exemption is given in cases of (a) act of God; (b) act of war or public enemy; (c) riots and civil commotion; and (d) arrest, restraint or seizure under legal process.⁵⁷ The central government is empowered under section 20 of the Act, to make rules for carrying out the provisions of this Act, by notifying in the official gazette.

The Central Road Fund (Amendment) Act, 2007⁵⁸

The present Act has amended sections 9 and 11 of the Central Road Fund Act, 2000 to enable the central government to use the share of the fund for the repayment of any loan taken for the purpose of development of the rural roads in any state or union territory.

X TRIBUNALS

The National Tax Tribunal (Amendment) Act, 2007

The National Tax Tribunal Act, 2005 provides for the adjudication of disputes with respect to levy, assessment, collection and enforcement of direct taxes by the national tax tribunal. It also provides for the adjudication of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purpose of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323-B of the Constitution of India. The constitutionality of this Act was challenged and the Supreme Court observed that it would examine the matter after such amendments as the government may think appropriate are made in this Act.⁵⁹ Keeping the apex court's view, the National Tax Tribunal (Amendment) Act, 2007⁶⁰ was introduced to amend sections 5(5), 6(2) and 13(1) of the National Tax Tribunal Act, 2005.

Sub-section (5) of section 5 has been amended, to provide that no member of the national tax tribunal shall be transferred by the central

55 The specified list is to be published in the Official Gazette by the Central Government, as per s. 14.

56 S. 18. (1) Whoever contravenes the provisions of section 3, section 13 or a notification issued under section 14 shall be punishable for the first offence with fine which may extend to five thousand rupees, and for the second or subsequent offence with fine which may extend to ten thousand rupees.

57 S. 17.

58 Act No. 28 of 2007.

59 *Supra* note 1.

60 Act No. 18 of 2007.



government without the concurrence of the chairperson. By amending subsection 2 of section 6 the qualifying period of service of a member of the income tax appellate tribunal and customs, excise and service tax appellate tribunal for appointment as member of the national tax tribunal has been reduced from seven years to five years. Section 13(1) has been amended to provide that a party may either appear in person or authorize a chartered accountant or a legal practitioner to appear on his behalf before the national tax tribunal.

The Administrative Tribunals (Amendment) Act, 2006

The Central Administrative Tribunals Act, 1985 was enacted in pursuance of article 323-A of the Constitution of India and it established administrative tribunals for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the union or any state or other authority within the territory of India or under the control of the Government of India or in corporations owned or controlled by the government. The tribunal consists of the chairman, vice-chairmen and members, appointed for a term of five years, with eligibility for re-appointment for another term of five years.

The Administrative Tribunals (Amendment) Act, 2006,⁶¹ has raised the retirement age of chairman from 65 years to 68 years; enhanced the status of members of the tribunal and consequently abolished the office of the vice-chairman. The reason for enhancement of age is to attract the most competent and deserving persons.

The Competition (Amendment) Act, 2007

The amendment Act has altered the composition of the commission and has made the offices of the chairman and members as full time. It has also provided for the creation of a selection committee consisting of the Chief Justice of India as the chairperson, to select the chairman and the members of the commission.

The Armed Forces Tribunal Act, 2007⁶²

The Armed Forces Tribunal Act, 2007 paves the way for the setting up of a tribunal⁶³ to deal with disputes relating to the personnel of the three services. The Act provides for the setting up of the tribunal's principal bench and branches at other places, as the central government may deem necessary. A judge of the Supreme Court or a former chief justice of a high court can be its chairperson⁶⁴ and will hold office for a four year term. The tribunal and its benches, having powers of a high court, will consist of such number

61 Act No. 1 of 2007.

62 Act No. 55 of 2007.

63 S. 4.

64 S. 6.



of judicial and administrative members as required. While members will be retired high court judges, the administrative members⁶⁵ will be drawn from the forces, who have served as judge advocate general for atleast one year in the army or the navy or the air force and is not below the rank of major general, commodore and air commodore, respectively.

Once the tribunal is constituted, all pending trials before civil courts including the high courts covered under the Army Act, 1950, Navy Act, 1957 and the Air Force Act, 1950 will stand transferred before the tribunal. Appeals against the verdicts of court martial can thereafter be made only before the tribunal.

XI MISCELLANEOUS LAWS

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007⁶⁶

The Act seeks to make more effective provisions for the maintenance and welfare of senior citizens and parents. With the withering away of the joint families, the conventional support structures are no longer available to senior citizens who at many times are victims of emotional, financial and physical neglect. The Act enables senior citizens and parents, who are unable to maintain themselves either from their own earnings or out of property owned by them to make an application⁶⁷ either by themselves or through a person or organization authorised by them to the tribunal constituted under section 7 of the Act claiming maintenance⁶⁸ from their children⁶⁹ or relative/s.⁷⁰ The tribunal is also empowered to take cognizance *suo motu*.⁷¹ Appeals may be made from the orders of the tribunal by the aggrieved senior citizen/parent to the appellate tribunal⁷² constituted under the Act. The Act specifically excludes legal representation of any party before the tribunal or appellate tribunal.⁷³

The Act provides for the establishment of old age homes by state governments but the establishment of such homes is not mandatory.⁷⁴ There are also provisions for medical support to be provided to senior citizens and steps to be taken for effective coordination between services provided by ministries or departments dealing with law, home affairs, health and welfare to address issues on the welfare of senior citizens.⁷⁵ The state government

65 S. 6(3).

66 Act No. 56 of 2007.

67 S. 5.

68 The maximum amount of maintenance that can be ordered to be paid is Rs. 10,000.

69 Children includes the son, daughter, grand son and grand daughter but does not include a minor. See s.2(a).

70 A relative has been defined as any legal heir of a childless senior citizen who is not a minor and is in possession of or would inherit his property after his death . See s. 2 (g).

71 S. 5 (1) (c).

72 S. 15.

73 S. 17.

74 S. 19.

75 S. 21.



is under an obligation to prescribe a comprehensive plan for providing protection to life and property of senior citizens.

The Act also provides that where any senior citizen has transferred his property on condition that he shall be provided with basic amenities by the transferee and such transferee fails to make such provision, such transfer would be deemed to be made fraudulently, under coercion or undue influence and may be declared void at the option of the transferor.⁷⁶ Further, abandonment of senior citizens by their children has been made punishable with imprisonment, which may extend up to three months.⁷⁷

XII CONCLUSION

The development of the country depends upon the future generation. The importance of education has been given primacy in the new Acts of Parliament. This shows that the state is duty bound to prepare its young generation with quality education, to cope up with the needs of globalization. It also shows that what is intended is not just globalization but to grow with globalization. The amendments made on the banking laws also give flexibility and independence for the investors. This attracts more monetary investments into the public banking sector. Trade related laws are made more suitable for the traders and also consumer friendly. The warehouseman is responsible for the loss of the goods stored in his warehouse. At the same time, he is empowered to dispose of the perishable goods, to save further loss, even without notice to the depositor/holder of receipts. Amendment in the Merchant Shipping Act and the Indian Ports Act opened an expressway to smooth trade through the sea. Road Carriage Act gave stimuli for the road transport. Inland water transport is also promoted by new legislation.

The National Rural Employment Guarantee Act is extended to the State of Jammu and Kashmir. The fruit of the Act is now available to all the states in India. The Constitution (Scheduled Castes) Order (Amendment) Act, 2007, brought new categories and castes to the status of the Scheduled Castes, so as to enable them to the various protections and positive discriminations available under the Constitution. In short, the laws made by Parliament in 2007 are a leaping step in the overall development of the country with a vision for the progressive future.

76 S. 23.

77 S. 24.