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CENTRAL LEGISLATION

*S Sivakumar**

I INTRODUCTION

IN CONTINUATION of the previous year, this year's legislation also witnessed prominence on education. Maritime education and research has been centralized by establishing a central university and all maritime studies have been put under it to raise the standard of maritime education. An Act was made wherein the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, was declared an institution of national importance.

Another significant legislation was the National Investigation Agency Act, 2008, enacted soon after the 26/11 terrorist attack. The creation of a national agency has been in the minds of many for a long time. In *Prakash Singh*¹ the Supreme Court received inputs from the National Human Rights Commission, the Soli Sorabjee Committee, the Bureau of Police Research & Development (BPR&D) and the Second Administrative Reforms Commission on the need and scope of a national investigation agency. For instance, the Report of BPR&D stated that the rapidity and relative ease of the adoption of new technologies and innovative methods of planning, coordinating and execution of cross-border crimes by the organized crime-terrorist nexus has outpaced the speed with which the law enforcement agencies at the state level have been able to afford to “modernize” themselves in terms of the resource base, expertise level, adoption and assimilation of new technologies of crime detection and prevention, adequately trained manpower to take on the new age tech-savvy terrorist organized crime nexus. Thus, the urgent need to declare certain offences having inter-state and international ramifications as “federal offences” to be investigated by a designated federal agency having the required level of expertise, paved the way for the National Investigation Agency Act, 2008.

Other areas which were touched by the legislature during the year under survey relate to aviation, constitution, drugs, emoluments, election, food, media, railways, water and labour welfare.

* LL.M., Ph.D., Research Professor, Indian Law Institute.

¹ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.



II ANTITERRORISM

The National Investigation Agency Act, 2008²

The National Investigation Agency Act was enacted to constitute an investigation agency³, namely, the National Investigation Agency, at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India and to strengthen friendly relations with foreign states. The superintendence of the agency vests in the central government. The Act aims to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations.

Special courts are constituted by the central government, under the Act,⁴ for the trial of scheduled offences, for such area or areas, or for such case or class or group of cases, as may be specified by the said government. The scheduled offences are triable only by the special court within whose local jurisdiction it was committed, notwithstanding anything contained in the Code of Criminal Procedure, 1973. A special court also has jurisdiction to take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

The Act makes specific provisions whereby, the Supreme Court may transfer any case pending before a special court to any other special court within that state or in any other state and the high court may transfer any case pending before a special court situated in that state to any other special court within the state, when the conditions prescribed in the Act exist.⁵

With a view to ensure speedy trial, the Act provides for trial of offences on day-to-day basis on all working days, by the special court. Such trial shall have precedence over the trial of any other case against the accused in any other court (not being a special court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance.⁶ The state government is obliged to constitute one or more special courts for the trial of offences under any or all the enactments specified in the schedule.⁷

2 Act No. 34 of 2008.

3 Under S. 3 of the National Investigation Agency Act, the National Investigation Agency is constituted for investigation and prosecution of offences under the Act specified in the Schedule, referred to as "Scheduled Offence".

4 S. 11 of the Act.

5 *Id.*, s. 13(2).

6 *Id.*, s. 19.

7 *Id.*, s. 22. 1, The Atomic Energy Act, 1962 (33 of 1962); 2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967); 3. The Anti-Hijacking Act, 1982 (65 of 1982); 4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982); 5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993); 6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002); 7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005); and 8, Offences under- (a) Chapter VI of the Indian Penal Code (45 of 1860) [ss. 121 to 130 (both inclusive)]; (b) Ss. 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860) are the Scheduled Acts.



The Unlawful Activities (Prevention) Amendment Act, 2008⁸

The Unlawful Activities (Prevention) Amendment Act, 2008 which amended the Unlawful Activities (Prevention) Act, 1967, was enacted to give effect to the Security Council Resolutions containing in chapter VII of the Charter of the United Nations requiring all the states to take measures to combat international terrorism and the Prevention and to the Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007.

Special courts are constituted under section 11 and section 21 of the National Investigation Agency Act, 2008 and the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007. Besides terrorist organizations, ‘terrorist gangs’ are also brought within the purview of the Act by virtue of the amendments made in the definition clause.⁹

The amendment exhaustively deals with what all amounts to terrorist acts¹⁰ for the purpose of the Act and stipulates the punishment for making demands of radioactive substances, nuclear devices, etc.¹¹ Punishment for raising funds for terrorist act¹² and provisions for punishment for organising of terrorist camps and for recruitment of any person or persons for commission of a terrorist act, are provided for, by way of amendment.¹³

The amendment inserted provisions which deal with the power to arrest, search, etc., procedure of arrest, seizure, etc., application of provisions of Code, modified application of certain provisions of the Code, presumption as to offence under section 15 and the obligation to furnish information.¹⁴ Restrictions on granting of bail, are brought in, in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.¹⁵ Separate provision with respect to bail of a non-citizen is also brought in.¹⁶

Provisions are also made enumerating the powers of the central government for the prevention of, and for coping with terrorist activities.¹⁷

8 Act No. 35 of 2008.

9 S. 3 of the Act.

10 *Id.*, s. 4.

11 By virtue of the s. 5 of the Amendment Act which inserted s. 16A, after s. 16.

12 Substituted s. 17 reads, “Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”

13 See newly inserted ss. 18A and 18B in the parent Act.

14 See newly inserted ss. 43 A to 43 F.

15 See s. 43D (6) of the parent Act.

16 S. 43D (7) of the Amended Act provides that notwithstanding anything contained in subsections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

17 After s. 51, new s. 51A stands inserted, in the parent Act.



Thus, the amendments to the Unlawful Activities (Prevention) Act, 1967 have brought in various provisions to cover various facets of terrorism and terrorist activities, including financing of terrorism, which were not fully covered in the existing law. The amendment has provisions aiming at strengthening the arrangements for speedy investigation, prosecution and trial of cases related to terrorism. The amendment also takes measures against any possible misuse of such provisions.

III AVIATION

The Airports Economic Regulatory Authority of India Act, 2008¹⁸

The Airports Economic Regulatory Authority of India Act, 2008 intends to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports. It establishes an appellate tribunal to adjudicate disputes and dispose of appeals. All airports where air transport services are operated or are intended to be operated, other than airports and airfields belonging to or subject to the control of the armed forces or paramilitary forces of the Union; all private airports and leased airports; all civil enclaves and all major airports are covered, within the ambit of the Act.¹⁹ The authority under the Act, is empowered:²⁰ (a) to determine the tariff for the aeronautical services, taking into consideration the factors mentioned therein; (b) to determine the amount of the development fees in respect of major airports; (c) to determine the amount of the passengers' service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934; (d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the central government or any authority authorised by it in this behalf; (e) to call for such information as may be necessary to determine the tariff under clause (a); and (f) to perform such other functions relating to tariff, as may be entrusted to it by the central government or as may be necessary to carry out the provisions of this Act.

The appellate tribunal constituted under the Act is vested with the jurisdiction to adjudicate any dispute between two or more service providers or any dispute between a service provider and a group of consumers.²¹ Matters relating to the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission, matters relating to the complaint of an individual consumer maintainable only before the consumer disputes redressal forum established under section 9 of the Consumer Protection Act, 1986, matters which are within the purview of the

18 Act No. 27 of 2008.

19 S. 3 of the Act.

20 *Id.*, s. 13.

21 See, s. 17 of the Act which provides for the establishment of appellate tribunal.



Competition Act, 2002, matters relating to an order of eviction which is appealable under section 28K of the Airports Authority of India Act, 1994 are excluded from the disputes, which can be adjudicated by the tribunal. The Act also provides for settlement of disputes.²² Any person aggrieved by any decision or orders made by authority can prefer an appeal to the appellate tribunal.

Wilful failure to comply with orders of the appellate tribunal and non-compliance with order of the authority or the appellate tribunal is punishable under the Act, besides the penal provisions dealing with failure to comply with any order or direction given under the Act, contravention, attempts to contravene or abetment of the contravention of the provisions of the Act or of any rules or regulations made thereunder.²³

On questions of policy, the authority under the Act is bound by the written directions of the central government.²⁴ The Act, however, gives discretion to the central government to give the authority an opportunity to express its views before any such direction is given.²⁵ The Act bars the jurisdiction of civil court in respect of any matter which the authority is empowered by or under this Act to determine.²⁶ It has made certain amendments to the Aircraft Act, 1934 and the Airports Authority of India Act, 1994 which are scheduled enactments under the Airports Economic Regulatory Authority Act, 2008.²⁷

The Act thus establishes an independent regulator, the Airports Economic Regulatory Authority, to regulate tariff and other charges related to the aeronautical services. The Act certainly will reduce the burden of the civil courts as there is a bar of jurisdiction of civil court in respect of any matter which the authority is empowered to deal with. Airports Economic Regulatory Authority of India Act thus aims at increasing the air traffic by inspiring confidence, in terms of the reasonableness of tariff and other charges for the aeronautical services.

IV CONSTITUTION

The Constitution (Scheduled Tribes) Order (Amendment) Act, 2008²⁸

The Constitution (Scheduled Tribes) Order (Amendment) Act, 2008 amends PART XVIII of the Constitution (Scheduled Tribes) Order, 1950 to bring about modifications, to the list of Scheduled Tribes in the State of Arunachal Pradesh. Entry 4 in the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in PART XVIII relating to the State of Arunachal

²² *Id.*, s. 18.

²³ See ss. 37-39.

²⁴ *Id.*, s. 42.

²⁵ Proviso to s. 42 of the Act.

²⁶ See s. 44 of the Act.

²⁷ *Id.*, s. 54.

²⁸ Act No. 14 of 2008.



Pradesh stands substituted with “Nyishi”, instead of “Dafla”, by way of the amendment.²⁹ Thus, the Amendment Act has done away with use of “Dafla”, which was coined by outsiders to refer to the Nyishi community, since it is considered a derogatory term.

V DRUGS AND COSMETICS

The Drugs and Cosmetics (Amendment) Act, 2008³⁰

The Drugs and Cosmetics (Amendment) Act, 2008 brought amendment to the Drugs and Cosmetics Act, 1940. Adulterated cosmetic is brought within the class of drugs and cosmetics, the sale and manufacture of which are prohibited under the Act, by virtue of the amendment.³¹ The situations under which a cosmetic shall be deemed to be adulterated, so as to attract the provisions of the Act, are brought in by the amendment.³² The amendment empowers the central government to regulate or restrict the manufacture, sale or distribution of a drug in public interest.³³ Penal provisions have been made more stringent in respect of offences under the Act.³⁴ Penalty for sale, manufacture etc. of adulterated cosmetics is made just as stringent as in the case of spurious cosmetic.³⁵ A new provision is made for releasing the fine collected from the offender to the victim and in case of death of the victim, to the victim’s relative.

The magistrate courts have been divested of its jurisdiction to try the offences under chapter IV, which deals with manufacture, sale and distribution of drugs and cosmetics. No court inferior to that of a court of sessions shall try an offence punishable under chapter IV.³⁶ As per the amendment, a gazetted officer of the central government or a state government authorised in writing by the central government or a state government by a general or special order made by that government is also authorised to institute a prosecution.³⁷

A provision for compounding the offences punishable under clause (b) of sub-section (1) of section 13, section 28 and section 28A of the Act, subject to the conditions provided therein, is brought in by way of the amendment.³⁸ The magistrate’s power to impose the penalty for offences that can be summarily tried under the Act is now made subject to penalty imposable for the offences triable by the special court under section 36AB or court of sessions. The amendment makes provisions for establishment of

29 S. 2 of the Constitution (Scheduled Tribes) Order (Amendment) Act, 2008.

30 Act No. 26 of 2008.

31 See substituted sub-cl. (ii) in cl. (a) of s. 18 of the parent Act.

32 S. 17E, deals with the situations under which a cosmetic shall be deemed to be adulterated.

33 See the newly inserted s. 26B.

34 Amended s. 27 of the Act.

35 See amended s. 27.

36 *Id.*, sub s. (1) to s. 32.

37 See amended s. 32, sub s. (1).

38 Newly inserted s. 32B.



special courts and proceedings before the special courts for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs.³⁹

The amendment mainly seeks to equate adulterated cosmetics to that of spurious cosmetics and drugs, in terms of the charging provisions and penal provisions. The amendment brings in stringent provisions such as a maximum penalty of life imprisonment and a fine of not less than Rs. 10 lakh for those engaged in manufacturing spurious and fake drugs and cosmetics. However, there are concerns, especially among drug-makers that a storage glitch that caused a medicine to lose its potency will be penalised as stringently as a spurious drug. Medicines can lose their stability and potency because of faulty storage or transportation. If law-enforcers pick up such products from retail shops, it would get categorised as an adulterated drug and the drug-maker would be punished for that too.

VI EDUCATION

The Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry Act, 2008⁴⁰

The Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry Act, 2008 declared⁴¹ the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, to be an institution of national importance. The main objects of the institute, as per the Act, are to develop patterns of teaching in undergraduate and postgraduate medical education in all its branches so as to demonstrate a high standard of medical education; to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and to attain self-sufficiency in postgraduate medical education to meet the country's needs for specialists and medical teachers.⁴² Undergraduate and postgraduate teaching in the science of modern medicine and other allied sciences, will be imparted at the institute.

The establishment and maintenance of one or more medical colleges with different departments, including a department of preventive and social medicine, undergraduate and postgraduate medical education in different subjects, establishment and maintenance of one or more well-equipped hospitals, a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary, a nursing college sufficiently staffed and equipped for the training of nurses,

³⁹ See ss. 36AB, 36AC, 36AD and 36AE.

⁴⁰ Act No. 19 of 2008.

⁴¹ S. 2 of the Act.

⁴² See s. 12 of the Act.



rural and urban health organisations which will form centres for the field training of the medical, dental and nursing students of the institute as well as for research into community health problems, and establishment and maintenance of other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists, pharmacists, drug analysts and medical technicians of various kinds and duty to train teachers from different medical colleges in India are among the notable functions of the institute.⁴³

The Act restricts the amount of fees and charges leviable from the students upto that of the fees and other charges specified by a medical institute of the central government, besides making provisions to reserve at least 20 seats out of every 75 seats in undergraduate courses in the institute for local applicants and for free treatment to the poor patients in the same manner as are being provided by a medical institute of the central government.⁴⁴

The Act has, to an extent, allayed fears regarding continuance of free treatment to the poor, fee structure for undergraduate students and service status of the employees and has brought steps to upgrade the institute to one of national importance.

The Indian Maritime University Act, 2008⁴⁵

The objective of the Act is to establish and incorporate a teaching and affiliating university at the national level to facilitate and promote maritime studies and research and to achieve excellence in areas of marine science and technology, marine environment and other related fields. The university, to be established by the name of Indian Maritime University shall have its headquarters at Chennai with its campuses at Mumbai, Kolkata, Chennai, Vishakhapatnam and such other places within its jurisdiction as it may deem fit.

As per the Act, the President of India shall be the Visitor of the university. The Act makes provision for review the work and progress of the university, including colleges and institutions managed by it, by the Visitor of the university. The Visitor is empowered to take such action and issue such directions as he/she considers necessary in respect of any of the matters dealt with in the report and the university shall be bound to comply with such directions and also to annul any proceeding of the university which is not in conformity with the Act, the statutes or the ordinances. The control and supervision over, and the responsibility for, the maintenance of standards of instruction, education and examination within the university vests with the academic council, which is the principal academic body of the university and shall also, have the right to advise the executive council on all academic matters.⁴⁶

43 *Id.*, s. 13.

44 *Ibid.*

45 Act No. 22 of 2008.

46 S. 22 of the Act.

A significant feature of the Act is the provision for dispute resolution mechanism. Arbitration, as a dispute resolution mechanism is provided in the Act for resolution of any dispute arising out of any disciplinary action taken by the university against a student.⁴⁷

The Act which established Indian Maritime University, is the first-of-its-kind central university set up by the Department of Shipping. Given the holistic approach of the Act, it could improve the standard of education in maritime law, and help in producing, competent professionals, who would contribute towards improving the quality of the ship building industry.

The Central Universities Laws (Amendment) Act, 2008⁴⁸

The Central Universities Laws (Amendment) Act, 2008, brought amendments to the Banaras Hindu University Act, 1915, the Delhi University Act, 1922, the Jawaharlal Nehru University Act, 1966, the North-Eastern Hill University Act, 1973 and the University of Hyderabad Act, 1974. By and large the amendments provided for preparation of annual report by the respective universities, and submission of the same to the central government, which in turn shall cause the report to be laid before both Houses of Parliament. The Delhi University Act makes it mandatory to submit copy of the accounts, together with the audit report, also to the central government, which shall, as soon as may be, cause the same to be laid before both Houses of Parliament.⁴⁹ This is in addition to the submission of the annual report. Similar provision for submission of accounts and audit report are incorporated in the Jawaharlal Nehru University Act, 1966.⁵⁰

The amendments to the North-Eastern Hill University Act, 1973 provides for submission of the report of Comptroller and Auditor-General, in addition to the annual report and copy of the accounts, to the central government, which shall, as soon as may be, cause the same to be laid before both Houses of Parliament.⁵¹

The Amendment Act has, therefore made the central government's supervision of financial activities of the five central universities established by Acts of Parliament, more effective.

VII EMOLUMENTS

The President's Emoluments and Pension (Amendment) Act, 2008⁵²

The Act amended the President's Emoluments and Pension Act, 1951. The emoluments to be paid to the President as per section 1 A stands enhanced to Rs. 1,50,000 from Rs. 50,000 . The pension to be paid to

47 *Id.*, s. 36 (2).

48 Act No. 25 of 2008.

49 S. 5 of the amending Act brought changes to s. 39 of the Delhi University Act, 1922.

50 S. 7 of the Central Universities Laws (Amendment) Act, 2008, amended s. 20 of the Jawaharlal Nehru University Act, 1966

51 S. 9 of the Central Universities Laws (Amendment) Act, 2008.

52 Act No. 28 of 2008



retiring Presidents is now fixed at the rate of 50 per cent of the emoluments of the President per month in place of Rs. 3 lakhs per annum, as it stood earlier. The facilities provided to a former President and to the spouse of a deceased President are enhanced and extended to the period even after the President ceases to hold office, either on expiration of the term of office or on resignation.⁵³

The amendment makes provision to remove any difficulty that arises in giving effect to the provisions of President's Emoluments and Pension Act, 1951, as amended by the President's Emoluments and Pension (Amendment) Act, 2008.⁵⁴ The Amendment Act which seeks to maintain parity of former Presidents with other dignitaries is a welcome one.

The Vice- President's Emoluments and Pension (Amendment) Act, 2008⁵⁵

The Act amended the Vice-President's Pension Act, 1997. As per amendment, the pension to be paid to the Vice-President is enhanced to the rate of 50 per cent of the salary of Vice-President from Rs, 20,000. Apart from this, additional provision for entitlement of secretarial staff also is made by the amendment.⁵⁶ The provision that provided for entitlement of an unfurnished residence to the spouse of a deceased Vice-President, stands modified and provision is made for entitlement of a furnished residence, including its maintenance.

The Salaries and Allowances of Officers of Parliament (Amendment) Act, 2008⁵⁷

The Act amended the Salaries and Allowances of Officers of Parliament Act, 1953. As per the amendment to the Act, the salaries and allowances of the Chairman of the Council of States stands enhanced to Rs. 1,25,000 from Rs. 40,000.⁵⁸

VIII ELECTION

The Delimitation (Amendment) Act, 2008⁵⁹

The Delimitation (Amendment) Act, 2008 that came into force w.e.f 14.1.2008 was enacted to amend to the Delimitation Act, 2002. The Amendment Act⁶⁰ repeals the Delimitation (Amendment) Ordinance, 2008. The provision making the readjustment of representation of the territorial constituencies in the House of the People or in the legislative assembly of a state and the delimitation of those constituencies provided for in any orders made under section 8 or section 9 of the Act applicable in relation

53 Amended s. 3 A (b) of the President's Emoluments and Pension Act, 1951.

54 Newly inserted section 6, *ibid.*

55 Act No. 29 of 2008

56 Amended s. 2(2) (b) of the President's Emoluments and Pension Act, 1951.

57 Act No. 30 of 2008.

58 See amended s. 3(1) of the Act.

59 Act No. 9 of 2008.

60 *Ibid.*



to every election to the House or to the Assembly, as the case may be, held after the publication of the order in the Gazette of India. Provisions relating to such representation and delimitation contained in any other existing law, insofar as such representation and delimitation are inconsistent with the provisions of this Act, is made non-applicable to the delimitation orders published in relation to the State of Jharkhand by virtue of the amendment.⁶¹ The delimitation of constituencies in respect of the State of Jharkhand to what it was prior to publication of Delimitation Commission's Orders O.N. 63(E), dated 30.4.2007 and O.N. 110(E), dated 17.8.2007 stands restored by the amendment.⁶² Therefore, Delimitation Commission's order made with respect to the State of Jharkhand stands nullified and the existing delimitation orders in respect of that state is to continue until the year 2026.

The amendment authorizes the President to defer the delimitation exercise in a state, if the President is satisfied that a situation has arisen whereby the unity and integrity of India is threatened or there is a serious threat to the peace and public order.⁶³ This power of the President prevails over sections 4, 8 and 9 of the Delimitation Act, 2002.⁶⁴ It is mandatory to lay every such order deferring the delimitation exercise in a state, before each House of Parliament.

The time, for the commission, to complete and publish each of its orders referred to in sub section (1) of section 10, upto 31.7.2008 stands extended.⁶⁵

The Amendment Act has put at rest the controversy regarding the issuance of Delimitation Commission's order of 2007 made with respect to the State of Jharkhand and clarified that the existing delimitation orders, the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, in respect of that state is to continue until the year 2026. The provision with respect to the President's power to defer the delimitation exercise, on the grounds of national security and interest, would take care of the state/union territories where there are law and order situation, while the process in the other state/union territories could go on.

The Representation of the People (Amendment) Act, 2008⁶⁶

The amendment provides that the extent of all parliamentary constituencies except the parliamentary constituencies in the States of Arunachal Pradesh, Assam, Jharkhand, Manipur and Nagaland shall be as determined by the orders of the Delimitation Commission made under the

61 By virtue of the newly inserted proviso to s. 10(4) of the Delimitation Act, 2002.

62 By way of the newly inserted s. 10 B of the Delimitation (Amendment) Act, 2008

63 See newly inserted s. 10 A to the 2002 Act.

64 S. 3 of the Delimitation (Amendment) Act, 2008. The amendment substituted sub-s. (5) in s. 4 of the Representation of the People Act, 1950 with a new one.

65 Prior to the amendment the time prescribed was "within two years of the constitution of the Commission".

66 Act No. 10 of 2008.



provisions of the Delimitation Act, 2002 and the extent of the parliamentary constituencies in the States of Arunachal Pradesh, Assam, Jharkhand, Manipur and Nagaland shall be as provided for in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008.⁶⁷ This provision was necessitated considering the fact that four orders to defer the delimitation exercise in these states were issued by the President on 8.2.2008 in view of the prevailing conditions in North- East States of Arunachal Pradesh, Assam, Manipur and Nagaland. As per the Delimitation of Parliamentary and Assembly Constituencies Order, 2008, in the States of Arunachal Pradesh, Assam, Manipur, Nagaland and Jharkhand, the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 will continue to apply.

There is an increase of 20, in the number of seats that shall be reserved for the scheduled tribes in the Legislative Assembly of the State of Arunachal Pradesh. The number of these seats stands increased from 39 seats to 59 seats.⁶⁸

The amendment mandates⁶⁹ consolidation of orders relating to the delimitation of parliamentary and assembly constituencies in all states and union territories, except the States of Arunachal Pradesh, Assam, Jharkhand, Manipur and Nagaland, made by the Delimitation Commission and published in the Official Gazette, amendments considered necessary for bringing up-to-date the description of the extent of the parliamentary and assembly constituencies as given in such orders, without, however, altering the extent of any such constituency, orders relating to delimitation of parliamentary and assembly constituencies in the States of Arunachal Pradesh, Assam, Manipur and Nagaland, after taking into account the provisions of the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, and orders relating to delimitation of parliamentary and assembly constituencies in the State of Jharkhand, into one single order to be known as the Delimitation of Parliamentary and Assembly Constituencies Order, 2008.⁷⁰ The amendment further mandates that the Election Commission shall send authentic copies of that order to the central government and to the government of each state having a legislative assembly; and thereupon that order shall supersede all the orders referred to in sub-section (5) of section 4 and sub-section (3) of section 7 and shall have the force of law and shall not be called in question in any court.

The amendment with respect to Delimitation of Parliamentary and Assembly Constituencies in the States of Arunachal Pradesh, Assam, Manipur or Nagaland empowers the President to rescind the deferment order issued under the provisions of section 10A of the Delimitation Act, 2002 in relation to any of the said states, and provide for the conduct of delimitation exercise

⁶⁷ S. 2 of the Representation of the People (Amendment) Act, 2008.

⁶⁸ The amendment to s. 7 of the Principal Act.

⁶⁹ Amended sub-s. (1) of s. 8 of the Principal Act.

⁷⁰ S. 4(i) of the Representation of the People (Amendment) Act, 2008.



in the state by the Election Commission, if the President is satisfied that the situation and the conditions prevailing in the States of Arunachal Pradesh, Assam, Manipur or Nagaland are conducive for the conduct of delimitation exercise. The further steps to be taken by the Election Commission, upon such rescinding the deferment order, are also dealt with in the Amendment Act, 2008.

The procedure by which the delimitation of parliamentary and assembly constituencies in the state and also the constituency or constituencies in which seats shall be reserved, if any, for the scheduled castes and the scheduled tribes is to be determined, by order, is provided in the Amendment Act.⁷¹

The final orders issued by the Delimitation Commission under the Delimitation Act, 2002, were required to be brought into force as provided in the second proviso to article 82 and the second proviso to clause (3) of article 170 of the Constitution by specifying the date by the President, as to when the re-adjustments shall take effect. Therefore, section 9 of the principal Act has been amended substituting clauses (a) and (aa). The substituted clauses make the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 applicable instead of the Delimitation of Parliamentary and Assembly Constituencies Order, 1966 and the Delimitation of Parliamentary and Assembly Constituencies Order, 1976.⁷²

The first Schedule and the Second Schedule have been substituted to incorporate the allocation of seats in the House of People and the legislative assemblies on the basis of Delimitation of Parliamentary and Assembly Constituencies Order, 2008.⁷³

The Amendment Act, therefore, completes the procedure mandated under article 82 and article 170 of the Constitution of India, by specifying as to when the re-adjustments would take place in respect of the states and union territories. The delimitation orders issued by the Delimitation Commission under the Delimitation Act, are made effective with immediate effect in all the 22 states/ union territories except in the States of Tripura and Meghalaya in which case, the delimitation order shall take effect from 20.3.2008 after the elections to the legislative assemblies in these states are over on 19.3.2008. Likewise, the amendment also takes care of the necessity to amend the relevant provisions and the first and the second schedule of the

71 See newly inserted sub-s. 5 of s. 8 A.

72 *Id.*, s. 6. The substituted clauses of s. 9 reads; ‘(a) correct any printing mistake in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 or any error arising therein from inadvertent slip or omission; (aa) make such amendments in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 as appear to it to be necessary or expedient for consolidating with that Order any notification or order relating to delimitation of Parliamentary or assembly constituencies (including reservation of seats for the Scheduled Castes or the Scheduled Tribes in such constituencies) issued under section 8A of this Act or any other Central Act;’

73 *Id.*, s. 8.



principal Act to reflect the changes made by the delimitation orders notified by the Delimitation Commission, in pursuance of the Delimitation Act, 2002.

IX FOOD

The Food Safety and Standards (Amendment) Act, 2008⁷⁴

The Food Safety and Standards (Amendment) Act, 2008 amended the Food Safety and Standards Act, 2006 with effect from 7.2.2008.⁷⁵ The amendment prohibits the chairperson of the Food Authority from holding any other office⁷⁶ and has prescribed an outer age limit of 65 years for the chairperson.⁷⁷ The Amendment Act which targets the chairperson of the Food Authority is issued repealing the Food Safety and Standards (Amendment) Ordinance, 2008.⁷⁸

X MEDIA

The Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008⁷⁹

The Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008 amended the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.⁸⁰ The amendment prescribes the qualification of the chairman of the corporation, i.e., the chairman shall be part-time member and shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of 70 years, whichever is earlier.⁸¹ Any person holding office as a chairman immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008, shall, insofar as his appointment is inconsistent with the said Act, cease to hold office of chairman and shall not be entitled to any compensation because of his ceasing to hold such office.⁸²

The amendment also stipulates that the executive member shall be a whole-time member and shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 65 years, whichever is earlier. As in the case of the chairman, provision is made for cessation of the office of the executive member, if the appointment to such office is inconsistent with the qualifications prescribed by the amendment.⁸³

74 Act No. 13 of 2008.

75 S. 2 of the Food Safety and Standards (Amendment) Act, 2008.

76 *Id.*, s. 3.

77 See s. 4 of the Act, which amended the proviso to sub-section (1), of S. 7 of the Principal Act.

78 *Id.*, sub-s. (1) of s. 5 of the Act.

79 Act No. 12 of 2008.

80 Sub-s. (2) of s. 1 of Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2008.

81 *Id.*, Amended s. 6 (1) of the Act.

82 *Id.*, cl. (a) of s. 2 of the Act.

83 Amended s. 2 A of s. 6 of the Principal Act.



Therefore, the amendment which repealed the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 2008,⁸⁴ is given retrospectivity, insofar the earlier appointments made to the post of chairman and executive member are concerned. While the Amendment Act saves anything done or any action taken under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 as amended by the said Ordinance, it does not make provision for saving things done or action taken by the concerned chairman and executive member, in case the said appointments would cease if they are inconsistent with the relevant provisions of the Amendment Act.

XI RAILWAYS

The Railways (Amendment) Act, 2008⁸⁵

The Railways (Amendment) Act, 2008 has made amendments to the Railways Act, 1989 and has repealed the Railways (Amendment) Ordinance, 2008.⁸⁶ The amendment has inserted provisions which deal with the procedure to be complied with, before actual acquisition of any land for special railway project; determination of amount, by an order of the competent authority, payable as compensation where any land is acquired under the Act. The Act has made the Arbitration and Conciliation Act, 1996, subject to the provisions of the Railways Act, 1989, applicable to every arbitration under Railways Act, 1989.⁸⁷

The amendment provides for return of any land or part thereof, acquired under the Act to the central government by reversion, when such land or part thereof remains unutilised for a period of five years from the date of taking over the possession.⁸⁸ The Land Acquisition Act, 1894 is expressly made non-applicable by virtue of the amendment. The National Rehabilitation and Resettlement Policy, 2007 for project affected families, notified by the Government of India⁸⁹ is made applicable, to persons affected due to land acquisition.⁹⁰

The Amendment Act therefore, provides separate provisions in the matter of acquisition of land or any part thereof for special railway project and has done away with the applicability of the Land Acquisition Act, 1894. By doing so, a specialised legislation to deal with the acquisition of land or any part thereof for special railway project is brought in. The incorporation of the National Rehabilitation and Resettlement Policy, 2007 would help

84 *Id.*, s. 3(1).

85 Act No. 11 of 2008.

86 Sub-s. (1) of s. 4 of the Railways (Amendment) Act, 2008.

87 See newly inserted ss. 20 A to 20 P of the Principal Act.

88 *Ibid*

89 The Government of India in the Ministry of Rural Development vide number F.26011/4/2007-LRD, dated the 31.10.2007.

90 See s. 20-O of the principal Act, as amended.



reduce the uncertainty, in terms of the rehabilitation and resettlement of persons affected due to land acquisition under the Act.

XII WATER

The National Waterway (Talcher-Dhamra Stretch of Rivers, Geonkhali-Charbatia Stretch of East Coast Canal, Charbatia-Dhamra Stretch of Matai River and Mahandi Delta Rivers) Act, 2008⁹¹

The National Waterway (Talcher-Dhamra Stretch of Rivers, Geonkhali-Charbatia Stretch of East Coast Canal, Charbatia-Dhamra Stretch of Matai River and Mahanadi Delta Rivers) Act, 2008 was enacted to declare certain stretches of rivers and canals as national waterway. The enactment covers Talcher-Dhamra stretch of Brahmani-Kharsua-Dhamra rivers, Geonkhali-Charbatia stretch of East Coast Canal, Charbatia-Dhamra stretch of Matai river and Mahanadi delta rivers between Mangalgadi and Paradip. The regulation and development of these stretch of the rivers and canals were brought under the control of the Union for the purposes of shipping and navigation on the national waterway to the extent provided in the Inland Waterways Authority of India Act, 1985.

The National Waterway (Kakinada-Puducherry Stretch of Canals and the Kaluvelly Tank, Bhadrachalam-Rajahmundry Stretch of River Godavari and Wazirabad-Vijayawada Stretch of Rivers Krishna) Act, 2008⁹²

The National Waterway (Kakinada-Puducherry stretch of Canals and Kaluvelly Tank, Bhadrachalam-Rajahmundry stretch of River Godavari and Wazirabad-Vijayawada stretch of River Krishna) Act, 2008 declares the Kakinada-Puducherry stretch of canals comprising of Kakinada canal, Eluru canal, Commamur canal, Buckingham canal and the Kaluvelly tank, Bhadrachalam-Rajahmundry stretch of river Godavari and Wazirabad-Vijayawada stretch of river Krishna in the States of Andhra Pradesh and Tamil Nadu and the Union Territory of Puducherry to be a national waterway. The statute confers the control of the regulation and development of the said stretch of the rivers and the canals on the Union for the purposes of shipping and navigation.

The National Waterway Acts are thus estimated to increase the smooth flow of inland water transport.

XIII WELFARE

The Maternity Benefit (Amendment) Act, 2008⁹³

The Maternity Benefit (Amendment) Act, 2008 amends the Maternity Benefit Act, 1961. The amendment enhances the maternity benefits to which women are entitled. A medical bonus of Rs. 1000, if no pre-natal confinement and post-natal care is provided for by the employer free of

91 Act No. 23 of 2008.

92 Act No. 24 of 2008.

93 Act No. 15 of 2008.



charge and an increase in the amount of medical bonus, subject to the maximum of Rs. 20,000, every three years, is provided to women, by the amendment.⁹⁴ The amendment, while being sensitive to the needs of women, would improve the conditions of women entitled to the benefit under the Act.

The Unorganised Workers' Social Security Act, 2008⁹⁵

The Act intends to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto. The workers falling under Workmen's Compensation Act, 1923,⁹⁶ the Industrial Disputes Act, 1947,⁹⁷ the Employees' State Insurance Act, 1948,⁹⁸ the Employees' Provident Funds and Miscellaneous Provisions Act, 1952,⁹⁹ the Maternity Benefit Act, 1961¹⁰⁰ and the Payment of Gratuity Act, 1972¹⁰¹ are outside the purview of the Act. A home-based worker, a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs,¹⁰² self-employed worker or a wage worker in the unorganised sector, including a worker in the organised sector who is not covered by any of the said Acts, are entitled to the benefits under the Act of 2008.

The central government is vested with the duty to formulate and notify suitable welfare schemes for unorganised workers on matters provided in the Act.¹⁰³ The Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, Janani Suraksha Yojana, Handloom Weavers' Comprehensive Welfare Scheme, Handicraft Artisans' Comprehensive Welfare Scheme, Pension to Master Craft Persons, National Scheme for Welfare of Fishermen and Training and Extension, Janshree Bima Yojana, Aam Admi Bima Yojana, Rashtriya Swasthya Bima Yojana are schemes, formulated and notified under the Act.

The Act also makes provision with respect to the funding of the scheme. Any scheme notified by the central government may be wholly funded by the central government; or partly funded by the central government and partly funded by the state government; or partly funded by the central government, partly funded by the state government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the central government.¹⁰⁴

94 S. 8 of the principal Act, as amended.

95 Act No. 33 of 2008.

96 Act No. 8 of 1923.

97 Act No. 14 of 1947.

98 Act No.34 of 1948.

99 Act No.19 of 1952.

100 Act No.53 of 1961.

101 Act No.39 of 1972.

102 See s. 2(b) of the Act.

103 *Id.*, s. 3.

104 *Id.*, s. 4.



The Act provides for constitution of the National Social Security Board for unorganised workers and State Social Security Board for unorganised workers.¹⁰⁵

The Act is a beneficial legislation, which would contribute to the development of the unorganized worker. The interest of unorganized workers who lacked the support of any organization to speak for them, is sought to be taken care of and protected. The various provisions in the Act obliging the central government to provide for matters that are necessary for the efficient implementation of the scheme; including provisions dealing with beneficiaries of the scheme, resources of the scheme, agency or agencies that will implement the scheme and redressal of grievances etc. would help the effective implementation of the Act, in comparison to several Acts which remain in papers, due to lack of similar provisions relating to implementation.

XIV MISCELLANEOUS

The Sugar Development Fund (Amendment) Act, 2008¹⁰⁶

This Act repealed the Sugar Development Fund (Amendment) Ordinance, 2008¹⁰⁷ and brought certain amendments to the Sugar Development Fund Act, 1982 and the Sugar Cess Act, 1982. The applicability of the fund under the Sugar Development Fund Act, 1982 has been extended to financial assistance to sugar factories. The Sugar Cess Act, 1982, has been amended to increase sugar cess from Rs. 15 to Rs. 25.¹⁰⁸

The amendment intends to meet the interest subvention cost and to empower the central government to increase the cess on sugar. The amendment is aimed at empowering the central government to increase the cess from the extant rate of Rs 15-25 per quintal and it would specify the increase in cess as per requirements of funds from time to time. The Amendment Act would improve the accretion to the Sugar Development Fund (SDF) on loans given to sugar factories by banks or financial institutions, to meet the requirements of various schemes approved by the government and to ensure that sufficient fund is available for carrying out other purposes of the Act in view of the amendment to the Cess Act.

XV CONCLUSION

Well educated and well equipped citizens are essential in a country in the era of globalization. The aforementioned new legislation on education points to this long ending vision of the legislators. The amendments made on

105 Sub-s. (1) of s. 5 of the Act provides for National Board for unorganised workers and s. 6 provides for State Social Security Board for unorganised workers.

106 Act No. 4 of 2008.

107 S. 4 of the Sugar Development Fund (Amendment) Act, 2008

108 Amendment to s. 3(1) of the Sugar Cess Act, 1982.



the Delimitation Act and the Representation of the People Act are aimed to make a smooth election, even though in some parts of the country, delimitation formalities were not completed.

The National Investigating Agency Act (NIA) brought in to constitute an investigation agency at the national level is a leaping step in ensuring security of the states and in combating terrorism. The NIA aims to investigate and prosecute offences affecting the sovereignty, security and integrity of India and to strengthen friendly relations with foreign states. The scope and power of NIA is extremely wide.

Unorganized Workers Social Security Act promotes the welfare of unorganized workers such as a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts. Amendment to the Maternity Benefit Act ensures financial support to women from her employer for prenatal and post natal care.

The National Waterway Acts are estimated to increase the smooth flow of inland water transport. Airports Economic Regulatory Authority of India Act seeks to increase the air traffic. In view of fast development in the infrastructure, Railway Act is amended.

In short, the laws made by the Parliament in 2008 are leaping steps in the overall development of the country with a vision for the safe and progressive future.

