

## 29

# CENTRAL LEGISLATION

*S Sivakumar\**

### I INTRODUCTION

THE YEAR 2009 witnessed several important legislative amendments as well as enactment of some new laws. The Parliament passed the Gram Nyayalaya Act, 2008 providing for the establishment of *gram nyayalayas* at the block level in the country, as the lowest tier of the judiciary for rural areas. The Prevention of Money-Laundering (Amendment) Act, 2009 was passed aiming at effectively combating money-laundering, terror financing and cross-border economic offences. The Information Technology (Amendment) Act, 2008 introduced several provisions relating to data protection and privacy as well as provisions to curb terrorism using the electronic and digital media.

### II AVIATION

#### **The Carriage by Air (Amendment) Act, 2009<sup>1</sup>**

The Carriage by Air (Amendment) Act, 2009 amends the Carriage by Air Act, 1972. By this amendment, the Montreal Convention, 1999 has been incorporated into 1972 Act rendering India to be the 91st country to have ratified Montreal Convention. The Montreal Convention applies to all international carriage of persons, baggage or cargo performed by aircrafts for reward.

Section 4A, inserted by amendment Act, provides as under:

- (1) The rules contained in the Third Schedule, being the provisions of the Montreal Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

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

<sup>1</sup> Act No. 28 of 2009.



- (2) For the purpose of this Act, the State Parties to the Montreal Convention and the date of enforcement of the said Montreal Convention shall be such as are included in Part III of the Annexure.
- (3) Any reference in the Third Schedule to the territory of any State Party to the Montreal Convention shall be construed as a reference to all the territories in respect of which he is party.
- (4) Any reference in the Third Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.
- (5) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, add to, or, as the case may be, omit from, Part III of the Annexure, any State Party and on such addition, or, as the case may be, omission, such State Party shall be or shall cease to be, a State Party.

The newly inserted section 6A, which deals with conversion of special drawing rights (SDRs), provides:<sup>2</sup>

[A]ny sum in Special Drawing Rights mentioned in rules 21 and 22 of the third schedule shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the court in accordance with the provisions of rule 23 of the said third schedule.

Under the third schedule, the liability of the carrier (airline) in case of destruction, loss, damage or delay can go up to 1000 SDRs for each passenger and if the passenger has made special declaration of higher value at the time of check-in, the liability can go up to such declared sum. It also states that any provision tending to relieve the airlines of liability or to fix a lower limit than that laid down in statutory rules shall be null and void. In terms of rule 22, a court in addition to these limits can provide litigation costs and other expenses including interest. This is applicable to all airlines irrespective of nationality of the aircraft provided the airline has a presence in India.

The third schedule and annexure are inserted after second schedule in the principal Act. The carrier shall be liable for damages sustained in case of death or bodily injury of a passenger on condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.<sup>3</sup> If the

2 In s.5 of the principal Act,- (a) in sub-s. (1) and (5), for the words "the First Schedule and in the Second Schedule," the words "the First Schedule, the Second Schedule and the third schedule" are substituted.

3 S. 17(1).



carrier proves that the damages was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of passenger, compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.<sup>4</sup>

In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of these rules would, subject to the provisions of sub-rule (4) of rule 18, apply only to the carriage by air, provided that the carriage by air falls within the meaning of rule 1(2). Nothing in these rules prevents the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of these rules are observed with regard to carriage by air.<sup>5</sup>

Chapter V deals with “Carriage by Air Performed by a Person Other Than the Contracting Carrier.” The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.<sup>6</sup>

### III AUTHORITIES/BOARD

#### **The Agricultural and Processed Food Products, Export Development Authority (Amendment) Act, 2009<sup>7</sup>**

This amending Act, which received the assent of the President on the 6th March, 2009, amends the Agricultural and Processed Food Products Export Development Authority Act (APEDA), 1985. It, *inter alia*, amends section 2 of the principal Act, for the words ‘scheduled products’ the words ‘scheduled products or as the case may be special products’ is substituted;<sup>8</sup> and for the words ‘the Schedule’ the words ‘the First Schedule’ is substituted.<sup>9</sup> ‘Special product’ means any of the agricultural or processed food products included in the second schedule.<sup>10</sup> The substituted section 3, dealing with power of the central government to the amend schedule, reads as under:

4 S. 20.

5 S. 38.

6 S. 41 (1).

7 Act No. 20 of 2009.

8 S. 2 (g).

9 S. 2 (i).

10 S. 2 (j).



The Central Government may, having regard to the objects to this Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette add to or, as the case may be omit, from the first schedule or the second schedule any agricultural or processed food product and on such addition, or as the case may be, omission, such product shall be or shall cease to be, a scheduled product or special product as the case may be.

A newly added section 10A reads as follows:<sup>11</sup>

Without prejudice to any law for the time being in force, it shall be the duty of the Authority to undertake, by such measures as may be prescribed by the Central Government for registration and protection of the intellectual Property rights in respect of Special products in India or outside India.

Section 35 provides that all things done or omitted to be done, and all actions or measures taken or not taken, during the period beginning on or after the 13th day of October, 2008 and ending immediately before the date of commencement of the Agricultural and Processed Food Products Export Development Authority (Amendment) Act, 2009, shall in so far as they are in conformity with the provisions of this Act, as amended by the APEDA, 2009 be deemed to have been done, or omitted to be done or taken or not taken under the provisions of this Act, as amended by the APEDA, 2009 as if such provisions were in force at the time such things were done or omitted to be done and actions or measures taken or not taken during the said period.

**The National Jute Board Act, 2008<sup>12</sup>**

The National Jute Board Act, 2008 was enacted with the purpose of development of cultivation, manufacture and marketing of jute and jute products and any other matter connected with this. The Act contains 7 chapters and 26 sections. The National Jute Board (NJB) is a statutory body set up under the administrative control of the Ministry of Textiles, Govt. of India and it has commenced operation with effect from the 1<sup>st</sup> April 2010. The establishment of a NJB was envisaged in the Government's National Jute Policy, 2005. The NJB has been constituted by merging the Jute Manufactures Development Council (JMDC)<sup>13</sup> and the National Centre for Jute Diversification (NCJD)<sup>14</sup> which have ceased to exist. All licenses,

11 As per the explanation to s.10A , for the purpose of this section "Intellectual Property" means any right to intangible property namely, trademarks, designs, patents, geographical indications or any other similar intangible property under any law for the time being in force.

12 Act No. 12 of 2009.

13 A statutory body set up by Jute Manufactures Development Council Act 1983.

14 A society set up by the central government and registered under the Societies Registration Act, 1860.



permits, quotas and exemptions, granted to the council or the society in connection with the affairs and business of the council, or, as the case may be, the society, under any law for the time being in force, shall be deemed to have been granted to the NJB by virtue of this Act.<sup>15</sup> The NJB is a body corporate with perpetual succession and a common seal<sup>16</sup> and its head office is in Kolkata.<sup>17</sup>

NJB, the apex body for promotion of Indian jute, comprises representatives from all sectors including farmers of jute, producers and exporters of jute products, experts, workmen employed in factories producing jute manufactures, as well as different departments of the Government of India and local governments of jute growing states. NJB's prime objective is to provide better marketing of jute products, although it addresses other multi-dimensional activities. It is the duty of the NJB to promote the development of jute and jute products by such measures as it thinks fit<sup>18</sup> and sponsor, assist, co-ordinate or encourage scientific, technological and economic research in matters related to materials, equipment, methods of production, product development including discovery and development of new materials, equipment and methods and improvements in those already in use in the jute industry.<sup>19</sup>

The board shall, in the discharge of its functions and duties under the statute, be bound by the directions on questions of policy issued by the central government.<sup>20</sup> The central government may, after due appropriation made by Parliament by law in this behalf, make grants and loans to the board such sums of money as that government may consider necessary.<sup>21</sup>

#### IV COMPETITION LAW

##### **The Competition (Amendment) Act, 2009<sup>22</sup>**

The Competition Act, 2002, was enacted keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian economy be enabled to allow competition in the market from within the country and outside. The Competition (Amendment) Act, 2009 amends the Competition Act, 2002. By amending section 66 of the Competition Act, 2002, “sun set” period for the continuance of the Monopolies and Restrictive Trade Practices Commission (MRTPC), is “on the commencement of the Competition (Amendment) Act, 2009”.

15 S. 8.

16 S.3 (2).

17 S. 3 (3).

18 S. 5 (1).

19 S. 5 (2) (xv).

20 S. 12(1).

21 S. 14 (1).

22 Act No. 39 of 2009, which came into force w.e.f. 14th day of October, 2009.



The newly inserted explanation reads as “for the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses or damages under section 12B of the Monopolies and Restrictive Trade Practices Act, 1969<sup>23</sup> as it stood before its repeal.”

For the words, brackets and figure “on or before the expiry of two years referred to in the proviso to sub-section (1),” the words, brackets and figures, “immediately before the commencement of the Competition (Amendment) Act, 2009, shall, on such commencement” are substituted.<sup>24</sup> The following proviso is inserted after proviso:<sup>25</sup>

Provided further that all the cases relating to the unfair trade practices pending, before the National Commission under this sub-section, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the appellate tribunal and be adjudicated by the appellate tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed. Provided that all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand transferred to the appellate tribunal and the appellate tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

Consequent to this, all cases pertaining to monopolistic trade practices (MTP) or restrictive trade practices (RTP), including such cases in which unfair trade practice (UTP) has also been alleged and all cases pertaining to UTP referred to in clause X of sub-section (1) of section 36A of the MRTP Act shall be transferred to the competition appellate tribunal with immediate effect.<sup>26</sup> All investigations or proceedings, other than those relating to UTP and all investigations or proceedings relating to UTP referred to in clause X of sub-section (1) of section 36A of the MRTP Act, 1969, pending before the director general of investigation and registration, are transferred to the competition commission of India with immediate effect.<sup>27</sup> All cases, investigations or proceedings pertaining to UTP defined under section 36A of the MRTP Act, except those referred to in clause X of sub-section (1) of section 36A of the Act are transferred to the national

23 Act No. 54 of 1969.

24 S. 66 (4).

25 A proviso inserted in s. 66 (7).

26 Sub-s. (3) and (5) of s.6 of the Act.

27 Sub-s. (6) and (8) of s. 66 of the Act.



consumer disputes redressal commission constituted under the Consumer Protection Act, 1986 with immediate effect.<sup>28</sup>

## V CONSTITUTIONAL AMENDMENTS

### **The Governors (Emoluments, Allowances and Privileges) Amendment Act, 2008<sup>29</sup>**

It was the Governors (Emoluments, Allowances and Privileges) Act, 1982 which determined the emoluments, allowances and privileges of Governors. The 2008 amendment to the said Act received the assent of the President on the 2nd January 2009. The amendment of section 2 of the principal Act gives a wider definition to the term “members of the family,” and it now includes “spouse, dependent children and the dependent parents” and it shall be deemed to have been substituted with effect from the 1st day of January, 2007. By amending section 3 of the principal Act providing for the emoluments, the emoluments are enhanced from rupees thirty-six thousand per *mensem* to rupees one lakh ten thousand per *mensem* and it shall be deemed to have been substituted with effect from the 1st day of January, 2006. Under section 4 of the amended Act if any difficulty arises in giving effect to the provisions of this Act, the central government may, by order, published in the official *gazette*, make such provisions, not inconsistent with the provisions of the principal Act as amended by this Act, as may appear to be necessary or expedient for the purpose of removing the difficulty.

### **The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Act, 2008<sup>30</sup>**

This is an Act further to amend the Constitution (Scheduled Tribes) (Union Territories) Order, 1951. It received the assent of the President on the 7<sup>th</sup> January, 2009. In the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, in Part I.-Lakshadweep, the following proviso and explanation is inserted at the end, namely: ‘Provided that the children who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the islands if such children settle permanently in the islands’. The term “settle permanently” shall have the same meaning as defined under clause 3(1)(d) of the Lakshadweep Panchayats Regulation, 1994.

## VI CRIMINAL LAW

### **The Code of Criminal Procedure (Amendment) Act, 2008<sup>31</sup>**

The Code of Criminal Procedure (Amendment) Act, 2008 amends few sections of the Code of Criminal Procedure, 1973. In section 2 of the Code

28 Sub-s. (4) and (7) of s. 66 of the Act.

29 Act No. 1 of 2009.

30 Act No. 2 of 2009.

31 Act No. 5 of 2009. It has come into force with effect from 31st December 2009.



of Criminal Procedure, 1973 after clause (w), clause (wa) has been inserted in which meaning of “victim”<sup>32</sup> has been given. The definition of the victim has been amended so as to include the victim’s guardian or legal heir in the definition itself.

As per the amendment in section 24, now the court may permit the victim to engage an advocate of his choice to assist the prosecution.<sup>33</sup> In section 26 of the Code, in clause (a), the proviso is inserted which reads as, “Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a court presided over by a woman.”

The amendment makes sweeping changes in the powers conferred on the police to arrest an accused. Every police officer while making an arrest shall - (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification; (b) prepare a memorandum of arrest which shall be (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made; (ii) countersigned by the person arrested; and (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. New sections 41A, 41B, 41C have been introduced to provide for detailed mandatory procedure in matters of arrest under various circumstances and also to provide for control room in every district, state and police headquarters, *etc.* in order to display the names and addresses of persons arrested along with the details of the person making the arrest. The amending Act also provides for the right to an arrested person to meet an advocate of his own choice during interrogation.<sup>34</sup>

A number of safeguards in matters of arrest of a woman have been incorporated in the new proviso to section 46. A new proviso provides, in sub-section (1): “Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.”

Provisions have been incorporated in section 54, and new sections 55A and 60A of the Code of Criminal Procedure to provide further safeguards and mandatory provisions regarding examination of arrested persons by medical officers, and taking care of their health and safety and such allied matters. It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.<sup>35</sup> No arrest

32 It means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.

33 S. 24 (8) of the Code.

34 S. 41D.

35 S. 55A.





shall be made except in accordance with the provisions of the Code or any other law for the time being in force providing for arrest.<sup>36</sup> The new proviso to section 157 provides important safeguards to victims of rape. In relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or a social worker of the locality. In section 172 of the Code, after sub-section (1), new sub-sections 1A is inserted which reads: “(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary. (1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.”

Amendment in section 173 provides that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station. In section 198 of the Code, in sub-section (6), for the words “fifteen years of age,” the words “eighteen years of age” is substituted. The magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.<sup>37</sup> Evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.<sup>38</sup>

The following proviso is inserted in section 309 of the Code:

- (a) in sub-section (1) which, reads as: “provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses”;
- (b) in sub-section (2), after the third proviso and before Explanation 1, the following proviso is inserted as

Provided also that- (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party; (b) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment; (c) where a witness is present in court but a party or his pleader is not present or the party or his pleader though present in court, is not ready to examine or cross-examine the witness, the court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

<sup>36</sup> S. 60A.

<sup>37</sup> A new proviso inserted in sub-s. (1) of s. 242 of the code.

<sup>38</sup> S. 275.



The amendment in section 416 of the Code provides that the words “order the execution of the sentence to be postponed, and may, if it thinks fit” shall be omitted.

Criminal proceedings against persons of unsound mind and lunatics are now regulated by the amended sections 328, 329 and newly substituted section 330. They contain detailed procedures and safeguards against lunatics and persons of unsound mind.

Section 357A (newly inserted) incorporates a newly introduced victim compensation scheme in order to alleviate the sufferings of the victim and to provide important safeguards to their right.

Section 437A incorporates a very important provision that before conclusion of trial or disposal of the appeal, the court shall require the accused to execute bail bonds with surety to ensure his appearance before the higher court as and when required, and such bail bond may remain in force for 6 months.

#### **The Prevention of Money-Laundering (Amendment) Act, 2009<sup>39</sup>**

This amending Act, which came into force with effect from June 01, 2009, amends few provisions of the Prevention of Money-Laundering Act, 2002 (2002 Act). The amendments have been made with a view to strengthen the legal framework for anti-money laundering and combating the financing of terror (AML/CFT). The list of offences in part A (offences without threshold value) of the schedule to the Act and part B (offences with threshold value) have been significantly expanded. The amendments, *inter alia*, specify the time frame for retention of various records, viz. CTRs/STRs and client identity records.

Amendment has also been made in section 2 of the 2002 Act which adds definition of “authorised person”,<sup>40</sup> “designated business or profession”,<sup>41</sup> “offence of cross border implications”,<sup>42</sup> “payment system”<sup>43</sup> and “payment

<sup>39</sup> Act No. 21 of 2009.

<sup>40</sup> It means an authorised person as defined in clause (c) of s. 2 of the Foreign Exchange Management Act, 1999.

<sup>41</sup> It means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time.

<sup>42</sup> It means any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India. Explanation.-Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money- Laundering (Amendment) Act, 2009.

<sup>43</sup> It means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them



system operator.”<sup>44</sup> For the words “ninety days”, the words “one hundred and fifty days” shall be substituted.<sup>45</sup>

A new proviso has been inserted in section 5 of the 2002 Act which reads: “Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence.”<sup>46</sup> For the words “one or more Adjudicating Authorities,” the words “an Adjudicating Authority” shall be substituted.<sup>47</sup> For the words and figure “offence under section 3”, the words and figure “offence under section 3 or is in possession of proceeds of crime” is substituted.<sup>48</sup>

In section 28 of the 2002 Act, in sub-section (2), clause (a) shall be omitted. In section 32, in sub-section (2), a new proviso<sup>49</sup> inserted as follows:<sup>50</sup>

When any property in India is confiscated as a result of execution of a request from a contracting state in accordance with the provisions of this Act, the Central Government may either return such property to the requesting state or compensate that state by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.

## VII EDUCATION

### Central University Act, 2009<sup>51</sup>

There are 39 central universities under the purview of the Ministry of HRD created under the Acts of Parliament. Out of them, 15 new central universities have been established w.e.f 15.1.2009 in *hitherto* uncovered states (except Goa), by an Ordinance promulgated by the President of India. The Ordinance has since been replaced by an Act of Parliament, namely,

44 It means a person who operates a payment system and such person includes his overseas principal.

45 S. 5 (1).

46 A new proviso substituted in s. 5 of the principal Act

47 S. 6 of the principle Act.

48 S.8 (1) of the principle Act.

49 “Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India.”

50 S.60 (7).

51 Act No. 25 of 2009.



Central Universities Act, 2009 which was assented to by the President of India on 20th March, 2009. The Act was enacted to establish and incorporate central universities for teaching and research in the various states. There shall be established universities in various states as bodies corporate, by such names and territorial jurisdiction, as specified in the first schedule to the Act. The headquarters of each of the universities will be such as may be specified by the central government by notification in the official *gazette*. The first chancellor, the first vice-chancellor and the first members of the court, the executive council and the academic council of each university, and all persons who may thereafter become such officers or members, so long as they continue to hold such office or membership, will hereby constitute a body corporate by the name of the university. Each university shall have perpetual succession and a common seal, and shall sue and be sued by the said name.

The objects of the university shall be to disseminate and advance knowledge by providing instructional and research facilities in such branches of learning as it may deem fit; to make special provisions for integrated courses in humanities, social sciences, science and technology in its educational programmes; to take appropriate measures for promoting innovations in teaching-learning process and inter-disciplinary studies and research; to educate and train manpower for the development of the country; to establish linkages with industries for the promotion of science and technology; and to pay special attention to the improvement of the social and economic conditions and welfare of the people, their intellectual, academic and cultural development.<sup>52</sup> The university shall be open to persons of either sex and of whatever caste, creed, race or class, and it shall not be lawful for the university to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the university or to hold any other office therein or to be admitted as a student in the university or to graduate thereat or to enjoy or exercise any privilege thereof: Provided that nothing in this section shall be deemed to prevent the university from making special provisions for the employment or admission of women, persons with disabilities or of persons belonging to the weaker sections of the society and, in particular, of the scheduled castes, the scheduled tribes and the other socially and educationally backward classes of citizens.<sup>53</sup> The President of India shall be the visitor of the university.<sup>54</sup> According to section 9, the officers of the university are the chancellor; the vice-chancellor; the pro-vice-chancellor; the deans of schools; the registrar, the finance officer; the controller of examinations; the librarian; and such other officers as may be declared by the statutes to be the officers of the university.

52 S. 5.

53 S. 7.

54 S. 8(1).



The authorities of the university include the court; the executive council; the academic council; the board of studies; the finance committee; and such other authorities as may be declared by the statutes to be the authorities of the university.<sup>55</sup> The constitution of the court and the term of office of its members shall be prescribed by the statutes: Provided that such number of members, as may be prescribed by the statutes, shall be elected from among the teachers, employees and students of the university.<sup>56</sup> The executive council shall be the principal executive body of the university. The constitution of the executive council, the term of office of its members and its powers and functions shall be prescribed by the statutes: Provided that such number of members as may be prescribed by the statutes shall be from among the elected members of the court.<sup>57</sup> The academic council is the principal academic body of the university and shall, subject to the provisions of this Act, the statutes and the ordinances, co-ordinate and exercise general supervision over the academic policies of the university.<sup>58</sup> The authorities of the university may make regulations, consistent with this Act, the statutes and the ordinances, for the conduct of their own business and that of the committees, if any, appointed by them and not provided for by this Act, the statutes or the ordinances, in the manner prescribed by the statutes.<sup>59</sup> The annual report of the university shall be prepared under the direction of the executive council, which shall include, among other matters, the steps taken by the university towards the fulfillment of its objects and shall be submitted to the court on or before such date as may be prescribed by the statutes and the court shall consider the report in its annual meeting.<sup>60</sup> The annual accounts and balance-sheet of the university shall be prepared under the direction of the executive council and shall, once at least every year and at intervals of not more than fifteen months, be audited by the comptroller and auditor-general of India or by such persons as he may authorise in this behalf.<sup>61</sup> Every employee of the university shall be appointed under a written contract, which shall be lodged with the university and a copy of which shall be furnished to the employee concerned.<sup>62</sup> Every employee or student of the university or of a college or institution maintained by the university shall, notwithstanding anything contained in this Act, have a right to appeal within such time as may be prescribed by the statutes, to the executive council against the decision of any officer or authority of the university, or, the principal or the management of any college or an institution, as the case may be, and

55 S. 19.

56 S. 20.

57 S. 21.

58 S. 22.

59 S. 29.

60 S. 30 (1).

61 S. 31 (1).

62 S. 33 (1).



thereupon the executive council may confirm, modify or reverse the decision appealed against.<sup>63</sup> The university shall constitute for the benefit of its employees such provident or pension fund or provide such insurance schemes as it may deem fit in such manner and subject to such conditions as may be prescribed by the statutes.<sup>64</sup> If any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the university, the matter shall be referred to the Visitor whose decision thereon shall be final.<sup>65</sup>

**The Right of Children to Free and Compulsory Education Act, 2009<sup>66</sup>**

This Act has its history in the drafting of the Constitution of India but more specifically to the 86<sup>th</sup> Constitutional Amendment Act that inserted article 21A in the Constitution making education a fundamental right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated a separate education legislation. According to this Act, every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education.<sup>67</sup> Apart from conferring the right to education for children, the Act places the onus on governments and local authorities to provide schools and sets out standards and norms covering number of teachers, training and *curricula*.

According to section 4, where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, he or she can be admitted according to his/her age in class and can complete education even after 14 year of age. The right to transfer in other schools has also been mentioned in section 5 of the Act. It is duty of appropriate government and local authority to establish school, where it is not so established, within period of three years from the commencement of the Act.<sup>68</sup> The government schools shall provide free education to all the children and the schools will be managed by school management committees (SMC). It requires reservation of 25 per cent of places in schools for children from poor families. There will be no capitation fee and screening procedure for admission and any violation of this provision shall be punishable under section 13. For the purposes of admission to elementary education, the age of child shall be determined on the basis of birth certificate<sup>69</sup> but no child shall be denied admission in a school in the absence of proof of age.<sup>70</sup> The national commission for

63 S. 35.

64 S. 36(1).

65 S. 37.

66 Act No. 35 of 2009.

67 S. 3(1).

68 S. 6.

69 S. 14(1).

70 S. 14(2).



elementary education shall be constituted to monitor all aspects of elementary education including quality. According to section 16 of the Act, “(n)o child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.” There is prohibition of physical punishment and mental harassment to the children and contravention of this section is punishable.<sup>71</sup> As per section 28, no teacher shall engage himself or herself in private tuition or private teaching activity.

**The Science and Engineering Research Board Act, 2008<sup>72</sup>**

This Act has been enacted to provide the constitution of a board for promoting basic research in science and engineering and to provide financial assistance to persons engaged in such research, academic institutions, research and development laboratories, industrial concerns and other agencies for such research. The central government shall, by notification in the official *gazette*, constitute, for the purposes of the Act, a board to be called the science and engineering research board (SERB).<sup>73</sup> SERB would seek to enhance the level of basic research and also impart necessary autonomy, flexibility and speed in shaping research and delivery of funds to researchers. The board shall consist of official and non-official members, namely: (a) Secretary, Government of India in the Department of Science and Technology, *ex officio*-Chairperson; (b) Member-Secretary, Planning Commission, *ex-officio*-Member; (c) Secretary to the Government of India in the Department of Biotechnology, *ex-officio*-Member; (d) Secretary to the Government of India in the Department of Scientific and Industrial Research, *ex-officio*-Member; (e) Secretary to the Government of India in the Ministry of Earth Sciences, *ex-officio*-Member; (f) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his nominee, *ex-officio*-Member; (g) Secretary to the Government of India in the Department of Health Research, *ex-officio*-Member; (h) not more than three members to be appointed by the Central Government from amongst persons having experience in scientific research in different disciplines in academic institutions; (i) not more than three members to be appointed by the central government from amongst persons having experience in scientific research in different disciplines in government research laboratories; (j) not more than four members to be appointed by the Central Government from amongst persons having experience in scientific research in different disciplines in the industry, international projects on science and technology, socio-economic sectors and other government research laboratories.<sup>74</sup> Section 4 deals with appointment of

71 S. 17.

72 Act No. 9 of 2009.

73 S. 3(1).

74 S. 3(3).



“Secretary and other officers and employees of Board.”<sup>75</sup> Section 7 deals with “Power and Functions of Board” which says that the Board shall serve as a premier multi-disciplinary research funding agency for planning, promoting and funding basic research in the emerging areas of science and engineering.

The central government may, after due appropriation made by Parliament by law, in this behalf, make to the board grants and loans of such sums of money as that government may consider necessary.<sup>76</sup> There shall be constituted a fund to be called the fund for science and engineering research and there shall be credited to the fund - (a) any grants and loans made to the board by the central government under section 9; (b) all sums received by the board including donations from any other source; (c) recoveries made of the amounts granted from the fund; and (d) any income from investment of the amount of the fund.<sup>77</sup> The board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the central government in consultation with the comptroller and auditor-general of India.<sup>78</sup> The central government shall cause the annual report and auditor’s report to be laid, as soon as may be after they are received, before each House of Parliament.<sup>79</sup> No prosecution or other legal proceeding shall lie against the central government or the board or any committee appointed by it or any member of the board or such committee, or any officer or employee of the government or the board or any other person authorised by the central government or the board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under.<sup>80</sup>

**The South Asian University Act, 2008<sup>81</sup>**

The South Asian University Act, 2008 has been enacted to give effect to the agreement for the establishment of South Asian University. It extends to the whole of India and to campuses and centres established outside India in the SAARC<sup>82</sup> region.<sup>83</sup> The university shall be a body corporate having perpetual succession and a common seal and shall sue and be sued by the

75 According to section 4 the Board may appoint an eminent Scientist not below the rank of Additional Secretary to the Government of India as the Secretary of the Board, in consultation with the Central Government.

76 S. 9.

77 S. 10 (1).

78 S. 13 (1).

79 S. 14.

80 S. 19.

81 Act No. 8 of 2009.

82 S. 2 (t), It means an organisation known as the South Asian Association for Regional Co-operation established by the Charter of the South Asian Association for Regional Co-operation signed on eighth day of December, 1985.

83 S. 2 (u), “SAARC region” means the region comprising the territories of the Member States.





said name.<sup>84</sup> The headquarters of the university shall be at Delhi.<sup>85</sup> There shall be a governing board of the university consisting of two members from each of the member States of the SAARC and the President of the university. Provided the first governing board is formed, the inter-governmental steering committee of the SAARC shall function as an *interim* governing board.<sup>86</sup> The objectives of the university are to - (a) to disseminate and advance knowledge, wisdom and understanding by providing instructional and research facilities in such branches of learning as it may deem fit; (b) to take appropriate measures for promoting innovations in teaching-learning process, inter-disciplinary studies and application of knowledge to social advancement, and human welfare and to the promotion of regional peace and security; (c) to impart liberal and humane education towards capacity building of the South Asian nations in the domain of science, technology and other areas of higher learning vital for improving their quality of life and to give students the analytical tools needed for the pursuit of profession and inculcate in them the quality of leadership; (d) to foster in the students sound civic sense and to train them to become useful citizens of democratic societies; (e) to build a South Asian community of learning where students from countries of South Asia are able to develop their fullest intellectual potential and to create a South Asian community by strengthening regional consciousness; and (f) to harmonise the academic standards and accreditation norms in teaching, research and curriculum that are acceptable to all Member States.<sup>87</sup> The university shall be open to all persons irrespective of gender, caste, creed, disability, ethnicity or socio-economic background and it shall not be lawful for the university to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the university or to hold any office therein or be admitted as a student in the university or to graduate thereat or to enjoy or exercise any privilege thereof.<sup>88</sup> The Foreign Minister of the current Chair of the SAARC shall be the Visitor of the university.<sup>89</sup> Section 11 provides for “Officers of University” according to which there shall be a President of the university and he shall be the Chief Executive Officer of the university. The executive council shall be the executive body of the university and shall exercise powers to give effect to the directions or decisions of the President and the governing board.<sup>90</sup> According to section 23, “The power to make statutes or regulations shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the statutes or

84 S. 4 (2).

85 S. 4 (3).

86 S. 6 (1).

87 S. 7.

88 S. 9.

89 S. 10 (1).

90 S. 16.



regulations or any of them but no retrospective effect shall be given to any statute or regulation so as to prejudicially affect the interests of any person to whom such statute or regulation may be applicable.” The annual report of the university shall be prepared under the direction of the governing board and shall be considered by the university at its annual meeting. The annual report of the university shall also be presented to the session of the Council of Ministers of the SAARC.<sup>91</sup> The accounts of the university shall, once at least in every year and at intervals of not more than fifteen months, be audited by any person or firm authorised by the governing board.<sup>92</sup>

**The Post-Graduate Institute of Medical Education and Research, Chandigarh (Amendment), Act 2008<sup>93</sup>**

This Act amends few provisions of the Post-Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966. The Post-Graduate Institute of Medical Education and Research, Chandigarh (PGI) was established as an autonomous body in 1966. The Institute has been awarding medical degrees and diplomas which are recognised medical qualifications. Section 13 of the principal Act provides that the PGI may establish and maintain dental college as well as a nursing college. Only the medical degrees and diplomas granted by the Institute as medical qualifications for the purposes of the Indian Medical Council Act, 1956 and the dental and nursing degrees and diplomas are not so recognized.<sup>94</sup> Therefore, there was a need to amend the principal Act so that the dental and nursing qualifications are also recognised for the purposes of the Dentists Act, 1948 and the Indian Nursing Council Act, 1947, respectively. The substituted section 23 confers on the PGI the power to grant medical, dental or nursing degrees, diplomas and other academic distinctions and titles. The substituted section 24 of the principal Act recognizes the medical dental or nursing degrees or diplomas granted by the institute as qualifications for the purpose of the Indian Medical Council Act, 1956, the Dentists Act, 1948 and the Indian Nursing Council Act, 1947, respectively.

## VIII ELECTION

**The Representation of the People (Amendment) Act, 2009<sup>95</sup>**

This Act has been passed to amend few sections of the Representation of the People Act, 1950 and the Representation of the People Act, 1951. In section 24 of the 1950 Act, which deals with the appellate authorities for the non-inclusion of names in electoral rolls, in clause (a), for the words

91 S. 24 (1).

92 S. 25(1).

93 Act No 3 of 2009.

94 Ss. 23 and 24.

95 Act No. 41 of 2009. It received the assent of the President on the 22nd December, 2009.



“chief electoral officer,” the words “district magistrate or additional district magistrate or executive magistrate or district collector or an officer of equivalent rank” is substituted. Now, the aggrieved person has to appeal to district magistrate or additional district magistrate or executive magistrate or district collector or an officer of equivalent rank at the first instance and the second appeal, *i.e.* from any order of the district magistrate or the additional district magistrate under clause (a) would lie before the chief electoral officer.”<sup>96</sup>

In the second schedule to the 1950 Act, against serial number 18 relating to the State of Mizoram, in column 7, for the entry “38,” the entry “39” shall be substituted.

In the 1950 Act, in sub-section (1) of section 8A, for the words “as soon as may be after such order takes effect,” the words “as soon as may be within a period of three months from the date such order takes effect” is substituted. Section 8A disqualifies a person on ground of corrupt practices. Hence, now the case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be after such order takes effect, by such authority as the central government may be specified in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period. For the words “a sum of ten thousand rupees or where the candidate is a member of a scheduled caste or scheduled tribe, a sum of five thousand rupees,” the words “a sum of twenty-five thousand rupees or where the candidate is a member of a scheduled caste or scheduled tribe, a sum of twelve thousand five hundred rupees” is substituted;<sup>97</sup> and for the words “a sum of five thousand rupees or where the candidate is a member of a scheduled caste or scheduled tribe, a sum of two thousand five hundred rupees,”<sup>98</sup> the words “a sum of ten thousand rupees or where the candidate is a member of a scheduled caste or scheduled tribe, a sum of five thousand rupees” is substituted.<sup>99</sup> A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited, in the case of an election from a parliamentary constituency, a sum of twenty-five thousand rupees or where the candidate is a member of a scheduled caste or scheduled tribe, a sum of twelve thousand five hundred rupees.

Section 123 of the principal Act deals with corrupt practices and explains what would constitute bribery. In section 123 of the principal Act, in clause (7), for the words “from any person in the service of the Government,” the words “from any person whether or not in the service of the Government” is substituted. The obtaining or procuring or abetting or

<sup>96</sup> S. 24 (ii) (b).

<sup>97</sup> S. 34(1)(a) of the principal Act.

<sup>98</sup> In the case of an election from an Assembly or Council constituency

<sup>99</sup> S. 34(1)(b) of the principal Act.



attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the government and belonging to the "class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:"<sup>100</sup> Newly inserted section 126A puts restriction on publication and dissemination of result of exit polls.<sup>101</sup> Any person who contravenes the provisions of section 126A shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.<sup>102</sup>

### IX INFORMATION TECHNOLOGY

#### The Information Technology (Amendment) Act, 2008<sup>103</sup>

The United Nations General Assembly by resolution A/RES/51/162, dated 30<sup>th</sup> January 1997 adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. Following the UN Resolution India passed the Information Technology Act, 2000 (IT Act). The IT Act has been substantially amended through the Information Technology (Amendment) Act 2008 which was assented to by the President on February 5, 2009. The term "digital signature" has been replaced with "electronic signature"<sup>104</sup> to make the Act more technology neutral. A new section has been inserted to define "communication device"<sup>105</sup> which means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text video, audio or image. A new section has been added to define "cyber café"<sup>106</sup> as any facility from where the access to the internet

100 A new sub-clause shall be inserted i.e., s. 123(7) (h).

101 A new inserted s. 126A (1) provides:  
No person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission in this regard.

102 A newly inserted s. 126 B (1) provides as follows:  
Where an offence under sub-s. (2) of s.126A has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-s. shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

103 Act No. of 2009.

104 S. 2.

105 S. 2 (ha).

106 S. 2 (na).



is offered by any person in the ordinary course of business to the members of the public. A new definition has been inserted for “intermediary.”<sup>107</sup> A new section 10A has been inserted to the effect that contracts concluded electronically shall not be deemed to be unenforceable solely on the ground that electronic form or means was used. The damages of Rs. one crore (approximately USD 200,000) prescribed under section 43 of the earlier Act for damage to computer, computer system, *etc.* has been deleted and the relevant parts of the section have been substituted by the words, “he shall be liable to pay damages by way of compensation to the person so affected.” A new section has been inserted to protect sensitive personal data or information possessed, dealt or handled by a body corporate in a computer resource which such body corporate owns, controls or operates. If such body corporate is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the person so affected.<sup>108</sup> A host of new sections have been added to section 66 as sections 66A to 66F prescribing punishment for offences such as obscene electronic message transmissions, identity theft, cheating by impersonation using computer resource, violation of privacy and cyber terrorism. Section 67 of the parent Act is amended to reduce the term of imprisonment for publishing or transmitting obscene material in electronic form to three years from five years and increase the fine from Indian Rupees 1,00,000 (approximately USD 2000) to Indian Rupees 5,00,000 (approximately USD 10,000). Few more new sections have been inserted as sections 67-A to 67-C. While sections 67-A and 67-B insert penal provisions in respect of offences for publishing or transmitting of material containing sexually explicit act and child pornography in electronic form, section 67-C deals with the obligation of an intermediary to preserve and retain such information as may be specified for such duration and in such manner and format as the central government may prescribe.

In view of the increasing threat of terrorism in the country, the new amendments include an amended section<sup>109</sup> giving power to the state to issue directions for interception or monitoring or decryption of any information through any computer resource. Newly inserted sections relate to granting power to the state to issue directions for blocking public access of any information through any computer resource and authorize to monitor

107 “Intermediary” with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes, but does not include a body corporate referred to in s. 43A.

108 S. 43A.

109 S. 69.



and to collect traffic data or information through any computer resource for cyber security.<sup>110</sup> Section 79 of the parent Act, which exempted intermediaries, has been modified to the effect that an intermediary shall not be liable for any third party information data or communication link made available or hosted by him if - (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; (b) the intermediary does not initiate the transmission or select the receiver of the transmission and select or modify the information contained in the transmission; (c) the intermediary observes due diligence while discharging his duties. However, section 79 will not apply to an intermediary if the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act or upon receiving actual knowledge or on being notified that any information, data or communication link residing in or connected to a computer resource controlled by it is being used to commit an unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner. A proviso has been added to section 81 which states that the provisions of the Act shall have overriding effect.<sup>111</sup>

## X JUDICIARY

### **The Supreme Court (Number of Judges) Amendment Act, 2008<sup>112</sup>**

The pendency of cases in the Supreme Court of India has constantly been on the rise largely due to higher rate of institution of cases. As on the 31st day of March, 2007, 41,581 cases were pending in the Supreme Court. The Chief Justice of India has intimated that the judges in the Supreme Court feel over-burdened and have been working under acute work pressure. It has also not been possible for the Chief Justice of India to constitute a five-judge bench on a regular basis to hear cases involving interpretation of Constitution as doing that would result in constitution of less number of division benches which in turn will result in delay in hearing of other civil and criminal matters. Therefore, amendments were made in the Supreme Court (Number of Judges) Act, 1956 by the Supreme Court (Number of Judges) Amendment Act, 2008 to increase the number of judges in the Supreme Court from twenty-five to thirty, excluding the Chief Justice of India. The increase would allow the Supreme Court to function more efficiently and effectively towards attaining the ultimate goal of rendering speedy justice.

110 S. 69 A and B.

111 The proviso states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.

112 Act No. 11 of 2009.

**The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2009**<sup>113</sup>

This Act amends the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 with a view to increase the salary and pension of the judges of the High Courts and the Supreme Court, respectively. Instead of thirty thousand rupees per *mensem*, the words ninety thousand rupees per *mensem* shall be substituted;<sup>114</sup> and twenty-six thousand rupees per *mensem* shall be substituted by eighty thousand rupees per *mensem*.<sup>115</sup> The words “plus fifty per cent of his dearness pay” shall be omitted.<sup>116</sup> Every retired judge or after his death, the family, shall be entitled to an additional quantum of pension or family pension.<sup>117</sup> New section 16B has been inserted which deals with “Additional quantum of pension or family pension.” In section 23B of the Supreme Court Judges Act, for the words “ten thousand” and “seven thousand five hundred,” the words “twenty thousand” and “fifteen thousand” shall, respectively, be substituted.

## XI GRAM NYAYALAYAS

**The Gram Nyayalayas Act, 2008**<sup>118</sup>

This Act enacted with the objective of establishing *gram nyayalayas* at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. The Act is applicable in whole of India except the State of Jammu and Kashmir, the State of Nagaland, the State of Arunachal Pradesh, the State of Sikkim and to the tribal areas.<sup>119</sup> For the purpose of exercising the jurisdiction and powers conferred on a *gram nyayalaya* by this Act, the state government, after consultation with the High Court, may, by notification, establish one or more *gram nyayalayas* for every *panchayat* at intermediate level or a group of contiguous *panchayats* at the intermediate level in a district or where there is no *panchayat* at intermediate level in any state, for a group of contiguous *gram panchayats*.<sup>120</sup> The headquarters of every *gram nyayalaya* shall be located

113 Act No. 23 of 2009.

114 In the High Court Judges (Salaries and Conditions of Service) Act, 1954 (High Court Judges Act), s. 13A (1).

115 S. 13A (2).

116 S. 17.

117 In the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (hereinafter referred to as the Supreme Court Judges Act), A new inserted s. 17B.

118 Act No. 4 of 2009.

119 “Tribal areas” means the areas specified in Parts I, II, IIA and III of the Table below paragraph 20 of the Sixth Schedule to the Constitution within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram, respectively.

120 S. 3(1).



at the headquarters of the intermediate *panchayat* in which the *gram nyayalaya* is established or such other place as may be notified by the state government.<sup>121</sup> The state government shall, in consultation with the High Court, appoint a *nyayadhikari* for every *gram nyayalaya*.<sup>122</sup> The salary and other allowances payable to, and the other terms and conditions of service of, a *nyayadhikari* shall be such as may be applicable to the judicial magistrate of the first class.<sup>123</sup> According to section 9: (1) the *nyayadhikari* shall periodically visit the villages falling under his jurisdiction and conduct trial or proceedings at any place which he considers is in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause of action had arisen: Provided that where the *gram nyayalaya* decides to hold mobile court outside its headquarters, it shall give wide publicity as to the date and place where it proposes to hold mobile court; (2) The state government shall extend all facilities to the *gram nyayalaya* including the provision of vehicles for holding mobile court by the *nyayadhikari* while conducting trial or proceedings outside its headquarters.

The *gram nyayalaya* shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act.<sup>124</sup> According to section 15(1) the provisions of the Limitation Act, 1963 shall be applicable to the suits triable by the *gram nyayalaya*. (2) The provisions of chapter XXXVI of the Code of Criminal Procedure, 1973 shall be applicable in respect of the offences triable by the *gram nyayalaya*. The state government shall determine the nature and categories of the officers and other employees required to assist a *gram nyayalaya* in the discharge of its functions and provide the *gram nyayalaya* with such officers and other employees as it may think fit.<sup>125</sup> A person accused of an offence may file an application for plea bargaining in *gram nyayalaya* in which such offence is pending trial and the *gram nyayalaya* shall dispose of the case in accordance with the provisions of chapter XXIA of the Code of Criminal Procedure, 1973.<sup>126</sup> The judgment in every trial shall be pronounced by the *nyayadhikari* in open court immediately after the termination of the trial or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.<sup>127</sup> In every suit or proceeding, endeavor shall be made by the *gram nyayalaya* in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a *gram*

121 S. 4.  
122 S. 5.  
123 S. 7.  
124 S. 11.  
125 S. 17(1).  
126 S. 20.  
127 S. 22(1).





*nyayalaya* shall follow such procedure as may be prescribed by the High Court.<sup>128</sup> Every police officer functioning within the local limits of jurisdiction of a *gram nyayalaya* shall be bound to assist the *gram nyayalaya* in the exercise of its lawful authority.<sup>129</sup> The High Court may inspect the *gram nyayalayas* once in six months.<sup>130</sup>

The setting up of *gram nyayalayas* will be an important measure to reduce arrears. These *gram nyayalayas* would not only relieve the back log of cases but also provide for speedy and door step justice for the vast populations that inhabit rural India. Effective implementation of this Act would go a long way in removing hindrances to access to justice for poor rural population.

## XII PARTNERSHIP

### **The Limited Liability Partnership Act, 2008**<sup>131</sup>

This Act, which received the assent of the President on the 7<sup>th</sup> January, 2009 is enacted to make provisions for the formation and regulation of limited liability partnerships (LLP). This Act is applicable to whole India. A limited liability partnership<sup>132</sup> is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners with perpetual succession. The rights, duties and liability of a partner are not affected in case of change in partner.<sup>133</sup> There is punishment for contravention of sections 7, 8 and 9 of the Act.<sup>134</sup> Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and in case of change of their office, they need to notify it to the registrar.<sup>135</sup> The LLPs are required to use “limited liability partnership” or the acronym “LLP” as the last words of their office name.<sup>136</sup> The persons who subscribe their name to the incorporation document<sup>137</sup> shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.<sup>138</sup> Chapter IV deals with “Partners and Their Relations” which is mentioned in section 22 to 25. A limited liability partnership is not bound by anything done by a

128 S. 26(1).

129 S. 35(1).

130 S. 37.

131 Act No. 6 of 2009.

132 S. 2(n): The high court may authorise any judicial officer superior in rank to the Nyayadhikari to inspect the Gram Nyayalayas within his jurisdiction once in every six months or such other period as the high court may prescribe and issue such instructions, as he considers necessary and submit a report to the high court.

133 S. 3.

134 S. 10.

135 S. 13.

136 S. 15.

137 S. 11.

138 S. 22.



partner in dealing with a person if - (a) the partner in fact has no authority to act for the LLP in doing a particular act; and (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.<sup>139</sup> There is unlimited liability in case of fraud.<sup>140</sup> It is compulsory to maintain proper books of account, other record and audit, *etc.*<sup>141</sup> Under section 42, it is provided that “the rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.”

To investigate the affairs of a LLP, the central government shall appoint inspectors.<sup>142</sup> It shall be the duty of the designated partner and partners of the LLP - (a) to preserve and to produce before an inspector or any person authorised by him in this behalf with the previous approval of the central government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power; and (b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.<sup>143</sup> A firm may convert into a LLP in accordance with the provisions of the Act.<sup>144</sup> There is different procedure for conversion of private and public company into LLP. The central government may make rules for provisions in relation to establishment of place of business by foreign LLPs within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956.<sup>145</sup> Chapter 12 which contains sections 63 to 65 deals with procedures related to winding up and dissolution of LLPs, according to which winding up shall be done voluntarily or by the tribunal and LLP.<sup>146</sup>

### XIII RAILWAYS

#### **The Metro Railway (Amendment) Act, 2009<sup>147</sup>**

This Act has been passed to amend the Delhi Metro Railway (Operation and Maintenance) Act, 2002 and the Metro Railways (Construction of Works) Act, 1978. Throughout the 2002 Act, for the words “metropolitan city of Delhi,” wherever they occur, the words “National Capital Region”

139 S. 27.

140 S. 30.

141 S. 34.

142 S. 43(1): The central government shall appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership.

143 S. 47.

144 S. 55 provides that a firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule.

145 S. 59.

146 S. 63.

147 Act No. 34 of 2009.



shall be substituted. In section 1 of that Act, for sub-sections (1) and (2), the following sub-sections shall be substituted,

- (1) This Act may be called the National Capital Region Metro Railway (Operation and Maintenance) Act, 2002.
- (2) It extends to the National Capital Region.

Section 2(h) has been omitted and a new section has been inserted which defines National Capital Region.<sup>148</sup> The Metro Rail Administration has power to provide other transport service as per new inserted section.<sup>149</sup> The commissioner shall function under the administrative control of the chief commissioner of railway safety appointed under section 5 of the Railways Act, 1989.<sup>150</sup> For section 12 of the 2002 Act, the substituted section provides that “the chief commissioner of railway safety shall, for each financial year, prepare in such form, and within such time, as may be prescribed, an annual report giving a full account of the activities of the commissioners during the financial year immediately preceding the financial year in which such report is prepared and forward copies thereof to the central government.” In section 13 of the Act, for the words “annual report of the Commissioner,” the words “annual report of the Chief Commissioner of Railway Safety” is substituted. For the words “Hindi and English a table of fare chargeable for travelling from the station,” the words “Hindi, English and official language of the state in which such station is located, a table of fare chargeable for travelling from that station” shall be substituted.<sup>151</sup> In section 38 of the Act, in sub-section (2), for the words “Government of the National Capital Territory of Delhi,” the words “State Government” shall be substituted. For the words and figures “purposes of section 195,” the words and figures “purposes of section 121 of the Indian Evidence Act, 1872 and section 195” shall be substituted.<sup>152</sup> In section 85 of the principal Act, - (i) for the words “Government of the National Capital Territory of Delhi,” at both the places where they occur, the words “State Government” shall be substituted; (ii) in sub-section (2), for the words “Delhi Gazette,” the words “Official Gazette” shall be substituted.

#### XIV MISCELLANEOUS

##### **The Central Industrial Security Force (Amendment) Act, 2009<sup>153</sup>**

The above Act amends the Central Industrial Security Force Act, 1968 (principal Act). The amendment made in section 2 of the Act: clause (cb)

148 S.2 (ka), National Capital Region” means the National Capital Region as defined in clause (f) of s. 2 of the National Capital Region Planning Board Act, 1985.

149 S. 6A.

150 A new inserted sub-s.2 in s.7.

151 S. 23 of the principle Act.

152 S. 41(2) of the principle Act.

153 Act No. 22 of 2009.



and clause (ga) has been inserted which carry definition of “joint venture”<sup>154</sup> and “private industrial undertakings.”<sup>155</sup> In section 4 of the principal Act, for sub-section (1), the following sub-section is substituted, “(1) The Central Government may appoint a person to be the Director-General of the Force and such other supervisory officers as considered necessary.” For the words “an Inspector-General, a Deputy Inspector General, a Commandant, a Deputy Commandant or an Assistant Commandant,” the words “such other supervisory officers as considered necessary” shall be substituted.<sup>156</sup> In section 10 of the principal Act: (i) in clause (c), after the word “safeguard,” the words “any joint venture, private industrial undertaking and” shall be inserted; (ii) in clause (h), after the words “any other duty,” the words “within and outside India” shall be inserted. In section 14 of the principal Act: (a) in the marginal heading, after the words “public sector,” the words, “joint venture or private sector” shall be inserted; (b) in sub-section (1), after the words “public sector,” the words, “joint venture or private sector” shall be inserted; (c) in the proviso to sub-section (2), for the words “one month’s notice,” the words “three month’s notice” shall be inserted. In section 15 of the principal Act, in sub-section (1), after the word “within”, the words “or outside” shall be inserted.

With the growing threat of terrorist outfits, the industries in the private sector and joint venture, which have contributed to the growth of economy, also require assurance of security. The amendments in essence enables the deployment of CISF for security of private sector and joint venture enterprises on cost reimbursement basis. The amendment would also facilitate deputation of CISF personnel on UN peacekeeping mission abroad wherever required.

#### **The Collection of Statistics Act, 2008**<sup>157</sup>

This Act facilitates the collection of statistics on economic, demographic, social, scientific and environmental aspects. It extends to the whole of India except the State of Jammu and Kashmir. The appropriate government may, by notification in the official *gazette*, direct that the statistics on economic, demographic, social, scientific and environmental aspects shall be collected through a statistical survey or otherwise, and thereupon the provisions of this Act shall apply in relation to those statistics.<sup>158</sup> The appropriate government may, by notification in the official *gazette*, direct that the statistics on economic, demographic, social,

154 It means a venture jointly undertaken by the Central Government or State Government with private industrial undertaking.

155 It means an industry owned, controlled or managed by a person other than the Central or State Government or any industrial undertaking in public sector.

156 S. 7 of the principal Act, in sub-s. (2).

157 Act No. 7 of 2009.

158 S. 3.



scientific and environmental aspects shall be collected through a statistical survey or otherwise, and thereupon the provisions of the Act shall apply in relation to those statistics.<sup>159</sup> According to section 5, the statistics officer may, for the purpose of collection of statistics on any specified subject in any geographical unit for which the said officer was appointed - (a) serve or cause to be served on any informant a notice in writing asking him to furnish the information specified under sub-section (5) of section 4 or cause a information schedule to be given to any informant for the purpose of its being filled up; or (b) cause all questions relating to the subject to be asked from any informant; or (c) seek information through tele-fax or telephone or e-mail or in any other electronic mode or in a combination of different modes for different sets of information so specified. The informants who are asked to furnish any information under the provisions of this Act shall be bound to furnish the information so asked in the prescribed manner to the best of knowledge or belief; and in cases where only a portion of a particular class or group of persons or units is asked to furnish information because of any sampling procedure, it shall not be a defense in failure on the part of any informant to furnish that information, if so asked.<sup>160</sup> Every agency shall render such help and assistance and furnish such information to the statistics officer or a person or an agency authorised by him in writing, as he may require for the discharge of his functions and shall make available for inspection and examination of such records, plans and other documents, as may be necessary.<sup>161</sup> The appropriate government may disclose individual returns or formats or information schedules to other agency or person or institutions or universities solely for *bona fide* research or statistical purposes pursuant to their functions and duties.<sup>162</sup> No information obtained pursuant to this Act and no copy of the information in the possession of any informant shall be disclosed or used as evidence in any proceedings.<sup>163</sup> Whoever fails to produce any books of accounts, vouchers, documents or other business records or whoever neglects or refuses to fill in and supply the particulars required in any information schedule or return given or sent to him or whoever neglects or refuses to answer any question or inquiry addressed to him as may be required under or for the purposes of any provision of this Act and the rules made thereunder, shall be punishable with a fine which may extend to one thousand rupees or, in the case of a company, with a fine which may extend to five thousand rupees.<sup>164</sup>

159 S. 4 (1).

160 S. 6.

161 S. 7.

162 S. 11.

163 S. 14 (a).

164 S. 15 (1).

**The National Capital Territory of Delhi Laws (Special Provisions) Act, 2009<sup>165</sup>**

This Act was enacted to make special provisions for the National Capital Territory of Delhi (NCT) for a further period up to the 31st day of December, 2009. The Act sought to maintain *status quo* in the Capital's unauthorised colonies, including village *abadis* (settlements) and their extensions, urban villages, slum clusters, storages, warehouses and godowns, schools, farm houses and some other categories.

There had been phenomenal increase in the population of the NCT owing to migration and other factors resulting in tremendous pressure on land and infrastructure leading to encroachment<sup>166</sup> or unauthorised developments<sup>167</sup> which are not in consonance with the concept of planned development as provided in the master plan<sup>168</sup> of Delhi, 2001 and the relevant Acts and building bye-laws made thereunder. This Act extends to the NCT. The central government shall before the expiry of this Act, take all possible measures to finalise norms, policy guidelines, feasible strategies and make orderly arrangements to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and *jhuggi-jhompri* clusters, hawkers and urban street vendors, unauthorised colonies, village *abadi* area (including urban villages) and its extension, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land.<sup>169</sup> According to section 4, during the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely: (a) encroachment on public land except in those cases which are covered under clauses (a),(b) and (c) of sub-section (1) of section 3; (b) removal of slums and *jhuggi-jhompri* dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village *abadi* area (including urban villages) and its extension in accordance with the relevant policies approved by the central government for clearance of land

165 Act No. 24 of 2009.

166 S. 2(1) (c). It means unauthorised occupation of Government land or public land by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use.

167 S. 2 (1) (i). It means use of land or use of building or construction of building or development of colonies carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment.

168 S. 2(1) (e). It means the Master Plan for Delhi with the perspective for the year 2021, notified vide notification number S.O.141(E), dated the 7th February, 2007, under the Delhi Development Act, 1957.

169 S. 3 (1).



required for specific public projects. The central government may, from time to time, issue such directions to the local authorities as it may deem fit, for giving effect to the provisions of this Act and it shall be the duty of the local authorities, to comply with such directions.<sup>170</sup>

The Act, which replaced the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007, thus provided further relief to the owners of unauthorised constructions for another year who were faced with an uncertain future on sealing and demolition of thousands of unauthorised commercial and residential constructions in the capital.

**The Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009<sup>171</sup>**

This Act has been enacted for the prevention, control and eradication of infectious and contagious diseases affecting animals, for prevention of outbreak or spreading of such diseases from one state to another, and to meet the international obligations of India for facilitating import and export of animals and animal products. The need for this Act arose due to various reasons like economic losses due to infectious and contagious diseases of animals. The state government may appoint veterinarians to undertake inspection and specify the local limits of their respective jurisdiction.<sup>172</sup> Every owner, or any other person, non-governmental organisation, public bodies or the village *panchayat*, in charge of any animal which he or it has reason to believe to be infective of a scheduled disease shall report the fact to the village officer or village *panchayat* in-charge, who may report the same in writing to the nearest available veterinarian.<sup>173</sup>

Any person who contravenes the provisions of this Act or obstructs the competent officer in performing his duties shall be guilty of an offence punishable with fine which may extend to one thousand rupees, and in case of failure to pay the penalty, with imprisonment for a term which may extend to one month; and in the case of any subsequent offence (whether under the same provision or any other provision of this Act except in case of sections 31 and 33) with a fine of two thousand rupees, or with imprisonment for a term which may extend to two months, in case of non-payment of the penalty.<sup>174</sup>

## XV CONCLUSION

The survey shows that the Parliament exercised its legislative power in a creative and effective way to address myriad legislative issues. India

170 S. 5.

171 Act No. 27 of 2009.

172 S. 3; The State Government may, by notification, appoint- (a) such number of persons, as it deems proper, to be Veterinarians to undertake inspection and specifying the local limits of their respective jurisdiction; and (b) such number of Veterinarians, as it deems proper, to be Veterinary Officers, who shall exercise their powers and discharge their duties.

173 S. 4 (1).

174 S. 32.



became one of 135 countries to make education a fundamental right for every child with the enactment of the Right of Children to Free and Compulsory Education Act. The reforms brought about by the Code of Criminal Procedure (Amendment) Act, 2008 would certainly benefit the citizens greatly, though it has elicited mixed reactions. By bringing the Carriage by Air (Amendment) Act, 2009, Parliament has not only brought Indian carriage law in line with international regime but has also imposed a sort of strict liability on airlines while dealing with customers belonging which they entrust to airlines with a duty to care. The passage of the Prevention of Money Laundering (Amendment) Act, 2009 enables India's entry into Financial Action Task Force (FATF), an inter-governmental body, that has the mandate to combat money laundering and terrorist financing. The Parliament has brought major amendments and substantial additions to the Information Technology Act, 2000 to effectively promote the IT industry, regulate e-commerce, facilitate e-governance and prevent cybercrimes. The amendments would foster security practices within India that would serve the country in a global context.