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# CENTRAL LEGISLATION

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### I INTRODUCTION

DURING THE year 2010, as in the past, some new and several amending legislations were passed by Parliament.<sup>1</sup> Some of the prominent new legislations passed during the year relate to education (the Nalanda University Act, 2010), environment (the National Green Tribunal Act, 2010), medical and health (the Clinical Establishments (Registration and Regulation) Act, 2010), ports (the Land Ports Authority of India Act, 2010), weights and measures (the Legal Metrology Act, 2009), nuclear damage (the Civil Liability for Nuclear Damage Act, 2010) and ministers' salaries and allowances (the Salaries and Allowances of Ministers (Amendment) Act 2009). The important amending legislations relate to minority educational institutions, insurance, medicine and health, essential commodities, *panchayats*, personal laws, banking and insurance, labour, *etc.*

### II BANKING AND INSURANCE

#### **Securities and Insurance Laws (Amendment and Validation) Act, 2010**

The Securities and Insurance Laws (Amendment and Validation) Act, 2010 [Act No. 26 of 2010] amends the Reserve Bank of India Act, 1934; the Insurance Act, 1938; the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992. Amendment has been made in section 45Y.<sup>2</sup> In the Insurance Act, 1938, in section 2, after clause (ii), the following Explanation<sup>3</sup> has been inserted. In the Securities Contracts (Regulation) Act,

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1 In all, forty-seven legislations including Finance Act, 2010, were notified in the year 2010: <http://164.100.47.132/bull2/2010/21.12.2010.pdf> visited on 23<sup>rd</sup> March 2011.

2 S. 45Y.- (1) Notwithstanding anything contained in this Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or any other law for the time being in force, if any difference of opinion arises as to whether -

(i) any instrument, being derivative referred to in clause (a) or money market instrument referred to in clause (b) or repo referred to in clause (c) or reverse repo referred to in clause (d) or securities referred to in clause (e) of section 45U of this Act; or

(ii) any instrument, being policy of life insurance under the Insurance Act, 1938, (4 of 1938) or the rules or regulations made thereunder, or, scrips or any other

1956, in section 2, clause (h), after sub-clause (id), an Explanation<sup>4</sup> is inserted with effect from the 9<sup>th</sup> day of April, 2010. The explanation provides that it is aimed at the removal of doubts by declaring that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938).

**The State Bank of India (Amendment) Act, 2010**

The State Bank of India Act, 1955 was last amended in 1993 to enable the State Bank of India to access capital market and the present amendment modifies few provisions. According to the State Bank of India (Amendment) Act, 2010 [Act No. 27 of 2010], the authorized capital of the State Bank shall be five thousand crores of rupees divided into five hundred crores of fully paid-up shares of ten rupees each.<sup>5</sup>

securities referred to in sub-clauses (i), (ia), (ib), (ic), (id), (ie), (ii), (iia) and (iii) of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), is hybrid or composite instrument, having a component of money market investment or securities market instrument or a component of insurance or any other instrument referred to in clause (i) or clause (ii) and falls within the jurisdiction of the Reserve Bank of India or the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) or the Pension Fund Regulatory and Development Authority constituted by the Resolution of the Government of India number F. No. 1(6)2007-PR, dated the 14<sup>th</sup> November, 2008, such difference of opinion shall be referred to a Joint Committee consisting of the following, namely:—

- (a) the Union Finance Minister — ex officio Chairperson;
  - (b) the Governor, Reserve Bank of India — ex officio Vice-Chairperson;
  - (c) the Secretary, Department of Economic Affairs in the Ministry of Finance, Government of India — ex officio Member;
  - (d) the Secretary, Department of Financial Services in the Ministry of Finance, Government of India — ex officio Member;
  - (e) the Chairperson, Insurance Regulatory and Development Authority — ex officio Member;
  - (f) the Chairman, Securities and Exchange Board of India- ex officio Member;
  - (g) the Chairperson, Pension Fund Regulatory and Development Authority — ex officio Member.
- 3 For the removal of doubts, it is hereby declared that “life insurance business” shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.’
  - 4 ‘Explanation.- For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938)’.
  - 5 Provided that the Central Board may reduce the nominal or face value of the shares,

In section 10 of the principal Act, in sub-section (2), for the words “fifty-five per cent of the issued capital”, the words, “fifty-one percent of the issued capital consisting of equity shares” have been substituted. Where the shares are registered in the name of more than one individual jointly, all their rights in the shares shall vest in the event of the death of all the joint holders. According to section 19A, the directors shall have special knowledge or experience in respect of one or more of the following areas, like agriculture and rural economy, banking, co-operation, economics, finance, law, small-scale industry, *etc.* No person shall be eligible to be elected as director under clause (c) of section 19 unless he is a person having fit and proper status based upon track record, integrity and such other criteria which has been laid by the Reserve Bank.

An annual general meeting shall be held in each financial year at the corporate centre or at such other place in Mumbai other than the corporate centre or at such other place in India specified by the central board. The shareholders present at an annual general meeting shall be entitled to discuss and adopt the balance sheet and the profit and loss account of the State Bank made up to the previous 31<sup>st</sup> day of March. The officers, advisers and employees of the State Bank shall individually or jointly or with other officers, advisers and employees in a local committee exercise such powers and perform such duties as may by general or special order, be entrusted or delegated to them by the central board or its Executive Committee.

### III CRIMINAL LAW

#### **Code of Criminal Procedure (Amendment) Act, 2010**

The Code of Criminal Procedure Code, 1973 was amended by the Code of Criminal Procedure (Amendment) Act, 2010 [Act No. 41 of 2010]. Only few amendments have been made: in section 41 of the Code,<sup>6</sup> in subsection (1), in clause (b), one proviso<sup>7</sup> has been inserted. For the words “the police officer may”, the words “the police officer shall” is substituted<sup>8</sup>. Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.

and divide the authorised capital into such denomination as it may decide with the approval of the Reserve Bank and Provided further that the Central Government may, in consultation with the Reserve Bank, increase or reduce the authorised capital so however that the shares in all cases shall be fully paid-up shares.

6 As amended by s. 5 of the Code of Criminal Procedure (Amendment) Act, 2008.

7 “Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.”

8 S. 41A of the Code of Criminal Procedure, 1973.

## IV EDUCATION

**The National Commission for Minority Educational Institutions (Amendment) Act, 2010**

The National Commission for Minority Educational Institutions Act, 2009 [Act No. 20 of 2010] was enacted to amend the National Commission for Minority Educational Institutions Act, 2004 [the principal Act] which constitutes a national commission for minority educational institutions. The functions which need to be performed by the national commission for minority educational institutions are to advise the central government or any state government on any question relating to the education of minorities, to enquire *suo motu*, to intervene in any proceeding related to deprivation or violation of the educational rights of the minorities, to review the safeguards provided by or under the Constitution, to specify measures to promote and preserve the minority status, to decide all questions relating to the status of any institution as a minority educational institution and declare its status as such and to make recommendations to the appropriate government for the effective implementation of programmes and schemes relating to the minority educational institutions.

According to the National Commission for Minority Educational Institutions (Amendment) Act, 2010 [Act No. 20 of 2010], in section 2 of the principal Act, amendment has been made in clause (g).<sup>9</sup> By this amendment, maximum number of the members is increased from two to three. This provision aims that the establishment of a minority educational institution will come to the knowledge of the competent authority at its inception itself. The words “and in consultation with the State Government” is omitted to avoid inconvenience to the minorities.

**The Nalanda University Act, 2010**

The Nalanda University, which was a very prestigious educational institution during the ancient period, has been given re-birth in the form of the Nalanda University Act, 2010. The Nalanda University Act, 2010 [Act No. 39 of 2010] implements the decisions taken in the Second East Asia Summit held on the 15th January, 2007, at Philippines and, subsequently, at the Fourth East Asia Summit held on the 25<sup>th</sup> October 2009 at Thailand for the establishment of the Nalanda University in the State of Bihar as an international institution for pursuit of intellectual, philosophical, historical and spiritual studies.

The University of Nalanda in the State of Bihar, shall be established as a body corporate under the Act by the name of “Nalanda University”. The objectives of the University is to impart education and to enable research towards capacity building of the member states in the domain of ancient

9 “Minority Educational Institutions” means a college or an educational institution established and administered by a minority or minorities’.

science, philosophy, language, history and other areas of higher learning vital for improving the quality of life, and to contribute to the promotion of regional peace and vision by bringing together the future leaders of East Asia, to harmonise the academic standards and accreditation norms in teaching, research and curriculum that are acceptable to all member states, and to understand Buddha's teachings in the contemporary context without excluding any other thoughts and practices from any other parts of the world. It also aims to foster in the students and scholars the spirit of accommodation, understanding and thus to train them to become exemplary citizens of democratic societies; and to contribute to the improvement of the educational system of the member states in view of the teaching in Nalanda several centuries ago, and to provide education and training in various arts, crafts and skills of the member states, raising their quality and improving their availability to the people. The University shall be open to all persons irrespective of gender, caste, creed, disability, ethnicity or socio-economic background.

According to section 12(1), the President of India shall be the visitor of the University.<sup>10</sup> The academic council shall be the principal academic body of the University and shall have the control and general regulation and responsible for the maintenance of standards of learning, education, instruction, evaluation and examination within the University.

The authorities of the University may make regulations consistent with this Act. The annual report of the University shall be prepared under the directions of the governing board which shall include the steps taken by the University towards the fulfillment of its objectives. According to section 34 of the Act, if any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, disciplinary committee or examination committee and who has been debarred from appearing at the examinations of the University for more than one year, he can, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the governing board and the governing board may confirm, modify or reverse the decision of the Vice-Chancellor or the committee.

## V ENVIRONMENT

### **The National Green Tribunal Act, 2010**

India had agreed to the decisions taken in the Stockholm Conference in June, 1972 and Rio declaration (June, 1992), to provide effective access to

10 Provided that the President may, by order, nominate any person to be the visitor and such person so nominated shall hold office for such term, not exceeding five years, as may be specified in the order and the person so nominated shall exercise the powers and discharge duties of the visitor.

judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. In the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution. The National Green Tribunal Act, 2010 [Act No. 19 of 2010] was enacted for the establishment of a national green tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources.

The tribunal is to consist of a full time chairperson, full time judicial members and full time expert members, to be constituted according to the central government's notification. For appointment as the chairperson of the tribunal, the qualification is that he is, or has been, a judge of the Supreme Court of India or Chief Justice of a High Court and a person who is or has been a judge of the High Court shall be qualified to be appointed as a judicial member. The chairperson, judicial member and expert member of the tribunal have to give notice in writing under their hand addressed to the central government to resign their office. In the event of the occurrence of any vacancy in the office of the chairperson of the tribunal, by reason of his death, resignation or otherwise, such judicial member of the tribunal as the central government may, by notification, authorise in this behalf, shall act as the chairperson until the date on which a new chairperson is appointed in accordance with the provisions of the Act.

The tribunal can provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in its schedule I. The decision of the tribunal by majority of members shall be binding. Every order of the tribunal under the Act shall be final. According to section 22,<sup>11</sup> the tribunal has power to pass necessary order while disposing of an application or an appeal under this Act. Section 25 deals with penal provisions according to which the tribunal have power to impose a fine of up to ten crore rupees and/or imprisonment of up to three years for failure to comply the order of the tribunal.

## VI HEALTH

### **Indian Medical Council (Amendment) Act, 2010**

The Indian Medical Council (Amendment) Act, 2010 [Act No. 32 of 2010] has been passed to amend the Indian Medical Council Act, 1956. After section

11 S. 22. (1) While disposing of an application or an appeal under this Act the Tribunal shall have power to make such order as to costs as it may consider necessary.

(2) Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

3 of the Indian Medical Council Act, 1956, sections 3A(1), (2), (3) and (4)<sup>12</sup> have been inserted. By this amendment, the council stood superseded. As a result, the office of the president, vice-president and members of the council stood vacated automatically. They can have no claim for compensation from the date of the enactment of the Act. According to sub-section 2 of section 3A, within a period of one year from the date of supersession of the council, the council is to be re-constituted. A provision is added for the constitution of a board of governors to exercise the powers and perform the functions of the council in the Act to do away the inconvenience that might be caused due to this amendment Act. It is also provided that the central government may by notification in the official *gazette* constitute the board of governors which shall consist of not more than seven persons as its members.<sup>13</sup>

The Act further provides that two-third of the members of the board of governors shall constitute the quorum for its meetings. Under any circumstances like any vacancy in, or any defect in the constitution of, the board of governors or any irregularity in the procedure of the board of governors cannot affect the merits of the case or become invalid. The board of governors shall be invalid if a member having any financial or other interest in any matter coming before the board of governors for decision does not disclose his interest in the matter. The chairperson and the other members of the board of governors shall hold office during the pleasure of the central government.

The newly inserted section 3B<sup>14</sup> provides certain modifications in the Act. Section 3C confers power to the central government to give directions in

- 12 S. 3A. (1) On and from the date of commencement of the Indian Medical Council (Amendment) Act, 2010, the Council shall stand superseded and the President, Vice-President and other members of the Council shall vacate their offices and shall have no claim for any compensation, whatsoever.
  - (2) The Council shall be reconstituted in accordance with the provisions of section 3 within a period of one year from the date of supersession of the Council under sub-section (1).
  - (3) Upon the supersession of the Council under sub-section (1) and until a new Council is constituted in accordance with section 3, the Board of Governors constituted under sub-section (4) shall exercise the powers and perform the functions of the Council under this Act.
- 13 This board shall consist of persons of eminence and of unimpeachable integrity in the fields of medicine and medical education, and who may be either nominated members or members, *ex officio*, to be appointed by the Central Government, one of whom shall be named by the Central Government as the Chairperson of the Board of Governors. The Chairperson and the other members, other than the members, *ex officio*, shall be entitled to such sitting fee and travelling and other allowances as may be determined by the Central Government. The Board of Governors shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as is applicable to the Council.
- 14 During the period when the Council stands superseded, - (a) the provisions of this Act shall be construed as if for the word "Council", the words "Board of Governors" were substituted; (b) the Board of Governors shall - (i) exercise the powers and



questions of policy.<sup>15</sup> The decision of the central government whether a question is a matter of policy or not shall be final.

**The Indian Medicine Central Council (Amendment) Act, 2010**

The Indian Medical Central Council (Amendment) Act, 2010 [Act No. 43 of 2010] was enacted to amend the Indian Medicine Central Council Act, 1970. By this amendment, sections 2,<sup>16</sup> 3, 8, 9, 17 and first schedule stood amended. For the words “and Unani” wherever they occur, the words “, Unani and Sowa-Rigpa” is substituted; and for the words “or Unani”, the words “Unani or Sowa-Rigpa” is substituted. A change has been made in section 9A(1)<sup>17</sup> about constituting members of central council. For the words “physician or”, the words “physician or Amchi or” shall be substituted. Suitable amendments were also made in the first schedule.<sup>18</sup>

**The Clinical Establishments (Registration and Regulation) Act, 2010**

The Clinical Establishments (Registration and Regulation) Act, 2010 [Act No. 23 of 2010] was enacted with aim to provide for the registration and

discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors; (ii) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided under section 10A without prior permission of the Central Government under that section, including exercise of the power to finally approve or disapprove the same; and (iii) dispose of the matters pending with the Central Government under section 10A upon receipt of the same from it.

- 15 Without prejudice to the provisions of this Act, the Board of Governors or the Council after its reconstitution shall, in exercise of its powers and in the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time: Provided that the Board of Governors or the Council after its reconstitution shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.
- 16 In s. 2, in clause (e), for the words “or Unani Tibb”, the words, “Unani Tibb or Sowa-Rigpa” is substituted
- 17 (A) For sub-section (1) the following sub-sections shall be substituted, namely:- (1) The Central Council shall constitute from amongst its members,— (a) a committee for Ayurveda; (b) a committee for Siddha; (c) a committee for Unani; and (d) a committee for Sowa-Rigpa, and each such committee shall consist of members elected under clause (a) or clause (b) or nominated under clause (c) of sub-section (1) of section 3 representing the Ayurveda, Siddha, Unani or Sowa-Rigpa system of medicine, as the case may be.”; (B) in sub-section (2), for the words “and Unani”, the words “, Unani and Sowa-Rigpa” shall be substituted; (C) in sub-section (3), for the words “or Unani”, the words “, Unani or Sowa-Rigpa” shall be substituted.
- 18 In the First Schedule to the principal Act, in paragraph 1, for the words “and Unani”, the words “Unani and Sowa-Rigpa” have been substituted.



regulation of clinical establishments in the country. It came into force at once in the States of Arunachal Pradesh, Himachal Pradesh, Mizoram and Sikkim and the union territories. Section 4<sup>19</sup> provides for the disqualifications of a member. It is the responsibility of the state council for clinical establishments to compile and update the state register of clinical establishments of the state and further to send monthly returns in digital format for updating the national register. This Act mandates that no person shall run a clinical establishment unless it has been duly registered in accordance with the provisions of this Act. Section 14,<sup>20</sup> provides the procedure for registration of the clinical establishments under section 10. The authority shall, within a period of ten days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and such information, as may be prescribed. The certificate shall be kept affixed in a conspicuous place in the clinical establishment in such manner so as to be visible to everyone visiting such establishment.

The application for renewal of registration shall be made thirty days before the expiry of validity of the certificate of provisional registration and, in case the application for renewal is made after the expiry of the provisional registration, the authority shall allow renewal of registration on payment of such enhanced fees, as may be prescribed.

The disallowing of an application for permanent registration shall not debar a clinical establishment from applying afresh for permanent registration under section 24 and after providing such evidence, as may be required, of having rectified the deficiencies on which grounds the earlier application was disallowed.

- 19 A person shall be disqualified for being appointed as a member of the National Council if he (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or (e) has, in the opinion of the Central Government, such financial or other interest in the Council as is likely to affect prejudicially the discharge by him of his functions as a member.
- 20 S. 14. (1) For the purposes of registration of the clinical establishment under section 10, an application in the prescribed proforma along with the prescribed fee shall be made to the authority. (2) The application shall be filed in person or by post or online. (3) The application shall be made in such form and shall be accompanied by such details as may be prescribed under this Act or rules made there under. (4) If any clinical establishment is in existence at the time of the commencement of this Act, an application for its registration shall be made within one year from the date of the commencement of this Act and a clinical establishment which comes into existence after commencement of this Act, shall apply for permanent registration within a period of six months from the date of its establishment. (5) If any clinical establishment is already registered under any existing law requiring registration of such establishments, even then it shall apply for registration as referred to in subsection (1).

According to section 34, the authority or an officer authorized, if there any reason to suspect that anyone is carrying on a clinical establishment without registration, can enter and search in the manner prescribed, at any reasonable time and the clinical establishment shall offer reasonable facilities for inspection or inquiry and be entitled to be represented thereat.

Whoever carries on a clinical establishment without registration shall, on conviction for first offence, be punishable with a monetary penalty of up to fifty thousand rupees, for second offence with monetary penalty which may extend to two lakh rupees and for any subsequent offence with monetary penalty which may extend to five lakh rupees. While holding an inquiry, the authority shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the authority, may be useful for or relevant to the subject matter of the inquiry. Any person aggrieved by the decision of the authority may prefer an appeal to the state council within a period of three months from the date of the said decision.

## VII INTELLECTUAL PROPERTY

### **The Trade Marks (Amendment) Act, 2010**

The Trade Marks (Amendment) Act, 2010 [No. 40 of 2010] has been enacted to amend the Trade Mark Act, 1999. Amendment has been made in section 11 of the 1999 Act in the Explanation for clause (a).<sup>21</sup> Any person may within four months from the date of the advertisement or re-advertisement of an application for registration has to give notice in writing to the registrar, of opposition to the registration. The words “within eighteen months of the filing of the application” has been inserted. A new chapter has been inserted by this amendment Act, *i.e.* chapter IVA which deals with provisions relating to Protection of Trade Marks through international registration under the Madrid Protocol. The provisions of this chapter shall apply to international applications and international registrations under the Madrid Protocol. Where an application for the registration of a trade mark has been made under section 18 or a trade mark has been registered under section 23, the applicant or the registered proprietor may make an international application in the form prescribed by the common regulations for international registration of that trade mark. The registrar shall, after receipt of an advice from the international bureau about any international registration where India has been designated, keep a record of the particulars of that international registration. The international registration of a trade mark at the international bureau shall be

21 A registered trade mark or an application under section 18 bearing an earlier date of filing or an international registration referred to in section 36E or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks.

for a period of ten years and may be renewed for a period of ten years from the expiry of the preceding period. Chapter IX has been omitted by this amendment.

## VIII LABOUR LAW

### The Employees' State Insurance (Amendment) Act, 2010

The Employees' State Insurance (Amendment) Act, 2010 [Act No. 18 of 2010] was enacted to amend the Employees' State Insurance Act, 1948. In the Employees' State Insurance Act, 1948 few changes have been made in section 2.<sup>22</sup> If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established. The corporation may also enter into agreement with any local authority, local body or private body for commissioning and running employees' state insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families. The corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the employees' state insurance scheme.

- 22 S. 2 reads: “(i) a widow, a legitimate or adopted son who has not attained the age of twenty-one years, an unmarried legitimate or adopted daughter;”
- (b) in sub-clause (ii), for the words “eighteen years”, the words “twentyone years” shall be substituted;
  - (B) in clause (9), the words “or under the standing orders of the establishment,” shall be omitted;
  - (C) in clause (11), for sub-clause (v), the following sub-clauses shall be substituted, namely:—
    - “(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;
    - (vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person;”;
  - (D) clause 12 which deals with term “factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

**The Industrial Disputes (Amendment) Act, 2010**

The Industrial Disputes (Amendment) Act, 2010 [Act No. 24 of 2010] has been enacted to amend the Industrial Disputes Act, 1947. In the Industrial Disputes Act, 1947, amendments have been made in section 2.<sup>23</sup> For holding a post of deputy chief labour commissioner (central) or joint commissioner of the state labour department, it is necessary to have a degree in law and at least seven years' experience in the labour department after having acquired degree in law including three years of experience as conciliation officer or an officer of Indian legal service in grade III with three years' experience in the grade.

According to section 9C, every industrial establishment employing twenty or more workmen shall have one or more grievance redressal committee for the resolution of disputes arising out of individual grievances which consist of equal number of members from the employer and the workmen and the chairperson of the grievance redressal committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year but the total number of members of the grievance redressal committee shall not exceed more than six. The workman who is aggrieved of the decision of the grievance redressal committee may prefer an appeal to the employer against the decision of grievance redressal committee and the employer shall, within one month from the date of receipt of such appeal, dispose of the same and send a copy of his decision to the workman concerned.

**The Plantations Labour (Amendment) Act, 2010**

The Plantations Labour (Amendment) Act, 2010 [Act No. 17 of 2010] has amended the Plantations Labour Act, 1951. In section 2 of the Plantations Labour Act, 1951, (a) in clause (e), the following Explanation<sup>24</sup> has been

- 23 S. 2 reads: (i) in clause (a) in sub-clause (i), for the words “major port, the Central Government, and”, the words “major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and” shall be substituted;
- (b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—
- “(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government.”;
- (ii) in clause (s), in sub-clause (iv), for the words “one thousand six hundred rupees”, the words “ten thousand rupees” shall be substituted.
- 24 For the purposes of this clause, the person who has the ultimate control over the affairs of the plantation means in the case of a plantation owned or controlled by (i) a company, firm or other association of individuals, whether incorporated or not, every director, partner or individual; (ii) the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the plantation; and (iii) a lessee, the lessee.

inserted. Where the worker is a male, his parents dependant upon him, and includes parents and widow sister, dependant upon him or her shall be substituted; for the words, “chief inspector” the words “State Government upon a request by the chief inspector” shall be substituted.

According to this Act, in every plantation, effective arrangements shall be made by the employer to provide for the safety of workers in connection with the use, handling, storage and transport of insecticides, chemicals and toxic substances. Every employer shall ensure that every worker in plantation employed for handling, mixing, blending and applying insecticides, chemicals and toxic substances, is trained about the hazards involved in different operations in which he is engaged, various safety measures and safe work practices to be adopted in emergencies arising from spillage of such insecticides, chemicals and toxic substances and every employer shall maintain health record of every worker who is exposed to insecticides, chemicals and toxic substances.

#### **The Payment of Gratuity (Amendment) Act, 2010**

The Payment of Gratuity (Amendment) Act, 2010 [Act No. 15 of 2010] amends the Payment of Gratuity Act, 1972. In section 4 of the Payment of Gratuity Act, 1972, in sub-section (3), for the words “three lakhs and fifty thousand rupees”, the words “ten lakh rupees” shall be substituted.

### IX LEGISLATURE AND GOVERNMENT

#### **The Tamil Nadu Legislative Council Act, 2010**

On the 12<sup>th</sup> April 2010, the Tamil Nadu Legislative Assembly passed a resolution in terms of clause (1) of article 169 of the Constitution for the creation of legislative council in that state. The Tamil Nadu Legislative Council Act, 2010 [Act No. 16 of 2010] was enacted accordingly providing for the creation of legislative council for the State of Tamil Nadu with seventy-eight members for giving better opportunity to people’s participation in governance and decision making.

According to this Act, there shall be a Legislative Council for the State of Tamil Nadu and in sub-clause (a) of clause (1) of article 168, after the word “Karnataka”, the words “Tamil Nadu” shall be inserted. After the commencement of this Act, the President, after consultation with the election commission, by order, can determine the constituencies into which the State of Tamil Nadu shall be divided for the purpose of elections to the said council, the extent of each constituency and the number of seats to be allotted to each constituency. In section 15A of the Representation of the People Act, 1951, after the words and figures “under the Andhra Pradesh Legislative Council Act, 2005”, the words and figures “and constituting the Legislative Council of the State of Tamil Nadu under the Tamil Nadu Legislative Council Act, 2010” shall be inserted.

**The Jharkhand Panchayat Raj (Amendment) Act, 2010**

On the 1<sup>st</sup> June 2010, the President issued a proclamation under article 356 of the Constitution in relation to the State of Jharkhand. The State of Jharkhand was under President's rule and as per the said proclamation, the powers of the legislature of the State of Jharkhand became exercisable by or under the authority of Parliament. The Jharkhand Panchayat Raj (Amendment) Ordinance, 2010 was replaced by the Jharkhand Panchayat Raj (Amendment) Act, 2010 [Act No. 33 of 2010]. The words "and Up-Mukhia" has been omitted. Proper procedure has to be followed in respect of reservation for the candidates belonging to the scheduled castes and the scheduled tribes.<sup>25</sup> The posts of *up-mukhia* in general areas as well as in the scheduled areas shall be kept unreserved or dealt with in accordance with the provisions made by the state government.

In general areas (non-scheduled areas), the total number of posts of *pramukh* of the district shall be reserved for the scheduled castes and the scheduled tribes candidates in proportion of their population and such posts shall be allotted by rotation to different constituencies by the state election commission. In case of less than fifty per cent, reservation of posts for the scheduled castes and the scheduled tribes candidates, the rest of the posts shall be reserved for the other backward classes in proportion to their population in the area, but in any case, the posts of *pramukh* reserved for the scheduled castes, the scheduled tribes and the other backward classes candidates shall not exceed fifty per cent of the total posts. For free and fair conduct of *panchayat* elections, the state election commission, in consultation with the state government, shall appoint general and expenditure observer, who shall supervise the entire election process and submit report to the state election commission.

- 25 Sub-section (1) of s. 21 reads: "(i) In General Areas (Non-Scheduled Areas), the posts of Mukhia shall be reserved for the candidates belonging to the Scheduled Castes and the Scheduled Tribes in proportion of their population and such posts shall be allotted by rotation in the prescribed manner to different constituencies by the State Election Commission.
- (ii) In case of less than fifty percent reservation of posts for the Scheduled Caste and the Scheduled Tribe candidates, rest of the posts shall be reserved for the Other Backward Classes in proportion to their population but in any case the total number of posts reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes shall not exceed more than fifty percent of the total posts.
- (iii) Out of the total posts reserved under clauses (i) and (ii) of this sub-section, not less than fifty per cent. of the posts shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes.
- (iv) Not less than fifty per cent. of the total posts of Mukhia (including the posts reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes) shall be reserved for women candidates and such posts shall be duly allotted by rotation by the State Election Commission in different Gram Panchayats of the Panchayat Samiti." '

**The Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2010**

The Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2010 [Act No. 37 of 2010] amends the Salary, Allowances and Pension of Members of Parliament Act, 1954. For the words “a salary at the rate of sixteen thousand rupees per mensem”, the words “a salary at the rate of fifty thousand rupees per mensem” have been substituted. Amendment has been done in section 6B(2).<sup>26</sup> For the words “one lakh rupees”, the words “four lakh rupees” has been substituted.

**The Salaries and Allowances of Ministers (Amendment) Act 2009**

The Salaries and Allowances of Ministers Act, 2009 [Act No. 2 of 2010] amends the Salaries and Allowances of Ministers (Amendment) Act, 1952. It is observed that a member of Parliament is entitled to travel by air for each single journey performed by him, either alone or along with spouse or any other number of companions or relatives whereas, a minister can avail this facility either for himself or for his family members only.

In order to remove this discrepancy in the entitlement of ministers to travel facilities, sub-section (1A) of section 6 of the Salaries and Allowances of Ministers Act, 1952 was amended so as to allow the spouse or legitimate or stepchildren residing with or wholly dependent on the minister to travel on their own or with the minister but to allow the companions or relatives of the ministers to travel only with the minister, subject to a maximum of forty-eight fares only.

A minister shall be entitled to an amount equal to the fare for a single journey performed by him during each year within India either alone or along with spouse or legitimate or step children, residing with and wholly dependent on him, or any number of companions or relatives, at the same rates at which travelling allowances is payable to such minister. Under sub-section (1A) of section 6 of the Salaries and Allowances of Ministers Act, 1952, a minister is entitled (subject to certain provisions of the Act) to travelling allowance in

26 Notwithstanding anything contained in clause (ii) of sub-section (1), the spouse of a Member shall be entitled to travel,—

- (a) any number of times, by railway in first class air-conditioned or executive class in any train from the usual place of residence of the Member to Delhi and back; and
- (b) when Parliament is in session, by air or partly by air and partly by rail, from the usual place of residence of the Member to Delhi or back, subject to the condition that the total number of such air journeys shall not exceed eight in a year:

Provided that where any such journey or part thereof is performed by air from any place other than the usual place of residence of the Member to Delhi and back, then, such spouse shall be entitled to an amount equal to the fare by air for such journey or part thereof, as the case may be, or to the amount equal to the journey performed by air from the usual place of residence of the Member to Delhi and back, whichever is less.”



respect of not more than twelve return journeys performed, during each year, within India, for himself and his family.

**The Representation of the People (Amendment) Act, 2010**

The Representation of the People (Amendment) Act, 2010 [Act No.36 of 2010] amends the Representation of the People Act, 1950 whereby sections 22, 23 and 28 stand amended and new section 20A is added. The addition of section 20A is a revolutionary change, which provides for including the name of the citizens residing outside India in the electoral roll, whether they are residing outside India for education, employment or otherwise. They are now entitled to exercise their franchise and allowed to vote in their constituency.<sup>27</sup> Those who have acquired the citizenship of some other country, shall not be eligible to register their name in the electoral roll.

The amendment in section 22 relates to the corrections in the electoral rolls and section 23 deals with inclusion of names in the electoral rolls. Any correction, deletion or change in the electoral roll due to the erroneous entry, death of a person or due to the reason that a person has ceased to be the ordinary resident of that constituency, the electoral registration officer has to make proper verification of the facts before making such amendments, deletion, *etc.* Such proper verification of the facts is to be done before including a new name in the electoral roll also. Section 28 was amended to enable the central government for rule making in this behalf.

## X MINES AND MINERALS

**The Mines and Minerals (Development and Regulation) Amendment Act, 2010**

This Act amends the Mines and Minerals (Development and Regulation) Act, 1957, which regulates mines and development of minerals. The 1957 Act states that prospecting or mining operations can be undertaken only after obtaining a prospecting licence or a mining lease. It specifies rules for granting licences or leases. This amendment Act seeks to allow the state government to grant a prospecting licence or mining lease for coal and lignite to private companies through auction by competitive bidding. The companies that can bid should be engaged in the production of iron and steel, generation of power and washing of coal obtained from mines. Certain areas are exempted from the auction. These include (a) areas which are considered for allocation to a government company, and (b) areas which are considered for allocation to a company that has got a power project on the basis of competitive bids for tariff.

27 S. 20A. (3) Every person registered under this section shall, if otherwise eligible to exercise his franchise, be allowed to vote at an election in the constituency.

## XI TRADE AND COMMERCE

**The Essential Commodities (Amendment) Act, 2010**

The Essential Commodities (Amendment) Act, 2010 [Act No. 35 of 2010] amends the Act of 1955. For the removal of doubts, it is hereby declared that the expressions “fair and remunerative price” referred to in clause (a), “manufacturing cost of sugar” referred to in clause (b) and “reasonable return on the capital employed” referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any state government and any price agreed to between the producer and the grower or a sugar cane growers’ co-operative society.

**The Foreign Trade (Development and Regulation) Amendment Act, 2010**

The Foreign Trade (Development and Regulation) Amendment Act 2010 [Act No. 25 of 2010] has been enacted to amend the Act of 1992 which was enacted for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India. According to the amendment, “specified goods or services or technology” means the goods or services or technology, the export, import, transfer, re-transfer, transit and transshipment of which is prohibited or restricted or in respect of which conditions have been imposed on grounds of their being pertinent or relevant to India as a nuclear weapon state, or to the national security of India, or to the furtherance of its foreign policy or its international obligations under any bilateral, multilateral or international treaty, covenant, convention or arrangement relating to weapons of mass destruction or their means of delivery to which India is a party or its agreement with a foreign country under the foreign trade policy formulated and notified under section 5 of the Act.

In section 3, few amendments<sup>28</sup> have been made. If the central government, after conducting enquiry, is satisfied that any article is imported into India in such increased quantities and cause or threaten to cause serious injury to domestic industry, it can impose such quantitative restrictions on the import of such articles. The quantitative restrictions imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition: Provided that if the central government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the quantitative restrictions should continue to be imposed to prevent such injury or threat and to facilitate the adjustments, it may extend the said period beyond four years. In regard to controls on export of specified goods, services and technology referred to in this chapter, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 shall apply to

28 For the words “import or export of goods”, the words “import or export of goods or services or technology” shall be substituted.

exports, transfers, re-transfers, brought in transit, trans-shipment of, and brokering in, specified goods, technology or services.

No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

**The Legal Metrology Act, 2009**

The Legal Metrology Act [Act No. 1 of 2010] has been passed to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight. According to section 2(g) “Legal Metrology” means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements. Every unit of weight or measure shall be in accordance with the metric system based on the international system of units. The base unit of numeration shall be the unit of the international form of Indian numerals and every numeration shall be made in accordance with the decimal system. The decimal multiples and sub-multiples of the numerals shall be of such denominations and be written in such manner as may be prescribed. For the purpose of deriving the value of base, supplementary, derived and other units mentioned in section 5, the central government shall prepare or cause to be prepared objects. Any transaction, dealing or contract in respect of any goods, or undertakings shall be made according to this act. Any custom, usage, practice or method of whatever nature which permits a person to demand, receive or cause to be demanded or received, any quantity of article, thing or service in excess of or less than, the quantity specified by weight, measure or number in the contract or other agreement in relation to the said article, thing or service, shall be void. According to section 14, the state government has power to appoint a controller of legal metrology, additional controller, joint controller, deputy controller, assistant controller, inspector and other employees for the state for exercising the powers and discharging the duties conferred or imposed on them. Every legal metrology officer shall exercise and discharge the duties under the general superintendence, direction and control of the controller. According to this Act, if the director, controller or any legal metrology officer has any reason to believe, whether from any information given to him by any person that any weight or measure or other goods in relation to which any trade and commerce has taken place, he can enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, seize any weight, measure or other goods and any record. No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and

particulars in such manner as may be prescribed. Whoever, uses or keeps for use any weight or measure or makes use of any numeration otherwise than in accordance with the standards of weight or measure or the standard of numeration, as the case may be, specified by or under the Act, shall be punished with fine which may extend to twenty-five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine. Whoever sells, distributes, delivers or otherwise transfers or uses any unverified weight or measure shall be punished with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

## XII MISCELLANEOUS

### **The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010**

The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 [Act No. 10 of 2010] was passed to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (principal Act) and to make provision for validation of certain actions taken by the central government. The principal Act was enacted for preservation of ancient and historical monuments and archaeological sites and remains of national importance. With the passage of time, the implementation of the provisions of the Act has become difficult especially due to increase in population in the areas surrounding the monuments and sites which is detrimental to the safety and security of monuments. Besides, the penal provisions in the Act for endangering the monuments, *etc.* were not stringent enough to provide effective deterrence. As a consequence of increased pressures of habitation, especially in urban area, protected monuments and protected sites are getting hemmed in from all sides, detracting from the aesthetics of the monuments and sites.

According to this amendment Act, the central government, on the recommendation of the authority, can prescribe categories in respect of ancient monuments or archaeological sites and remains declared as of national importance. Every area, beginning at the limit of the protected area or the protected monument and extending to a distance of one hundred meters in all directions, shall be the prohibited area in respect of such protected area or protected monument.

According to section 20C, any person, who owns any building or structure, which existed in a prohibited area before the 16<sup>th</sup> day of June 1992 or which had been constructed with the approval of the director-general, may repair or undertake renovation of such building or structure permission of the competent authority. No civil court shall have jurisdiction in respect of any matter which the authority is empowered by the Act to determine and no injunction shall be granted by any court or other authority under the Act.

There is an obligation on the directors according to section 35A like the

director-general has to conduct a survey in all prohibited areas and regulated areas for the purpose of detailed site plans and report about survey shall be given to the central government and to the authority.

**The Civil Defence (Amendment) Act, 2009**

The Civil Defence (Amendment) Act, 2009 [Act No. 3 of 2010] was enacted to amend few provisions of the Civil Defence Act, 1968 which is applicable to the whole of India. Few amendments has been made in section 2 of the Civil Defence Act, 1968 like

- (i) in clause (a), after the words “time of such attack”, the words “or any measure taken for the purpose of disaster management, before, during, at, or after any disaster” shall be inserted;
- (ii) after clause (f), the following clauses shall be inserted, namely:— (g) “disaster” means a disaster as defined in clause (d) of section 2 of the Disaster Management Act, 2005; (h) “disaster management” means the disaster management as defined in clause (e) of section 2 of the Disaster Management Act, 2005.

**The Energy Conservation (Amendment) Act, 2010**

The Energy Conservation (Amendment) Act, 2010 [Act No. 28 of 2010] has been enacted to amend the Energy Conservation Act, 2001 which provides directions for efficient use of energy and its conservation and to deal with the matters related to it. For the words “three years”, the words “five years” shall be substituted. The central government may issue the energy savings certificate to the designated consumers whose energy consumption is less than the prescribed norms and standards in accordance with the procedure as may be prescribed. The designated consumer whose energy consumption is more than the prescribed norms and standards shall be entitled to purchase the energy savings certificate to comply with the prescribed norms and standards. In section 54 of the principal Act, the words “Chairperson of the Appellate Tribunal or the Members of the Appellate Tribunal or officers or employees of the Appellate Tribunal or the Members of the State Commission or the” shall be omitted.

**The Land Ports Authority of India Act, 2010**

The Land Ports Authority of India Act, 2010 [Act No. 31 of 2010] has been enacted to provide for the establishment of the Land Ports Authority of India for the development and management of facilities for cross-border movement of passengers and goods at the designated points along the international borders of India. This Act defines “land port” to mean an area on the international borders of India including portions of national highways, state highways and other roads, notified as land customs station or immigration check post under the Customs Act, 1962 or the Foreigners’ Act, 1946, and includes railways, with facilities for clearance and transport of passengers and goods across the borders of India; According to section 3 of this Act, the

authority shall consist of a chairperson, a member (planning and development) and a member (finance) and not more than nine members, *i.e.* ex-officio to be appointed by the central government from amongst the officers, not below the rank of the joint secretary to the Government of India, representing the ministries or departments of the Government of India dealing with home affairs, external affairs, revenue, commerce, road transport and highways, railways, defence, agriculture and cooperation, law and justice.

A person shall be disqualified for being member if he has been convicted and sentenced to imprisonment for an offence which involves moral turpitude or an undischarged insolvent or is of unsound mind or has been removed or dismissed from the service of the government.

According to section 9, no act or proceeding of the authority shall be invalid merely by reason of any vacancy or any defect in the appointment of a person acting as a member of the authority; or any irregularity in the procedure of the authority not affecting the merits of the case.

All contracts, agreements and working arrangements subsisting immediately before the date of notification, affecting the land ports shall be of full force and effect as regards the authority. Any land required by the authority for the discharge of its functions under the Act shall be deemed to be needed for a public purpose and such land may be acquired for the authority under the provisions of the National Highways Act, 1956 or any other law for the time being in force.

The authority may, with the consent of the central government, borrow money from any source by the issue of bonds, debentures or such other instruments for discharging all functions under the Act.

#### **The Rubber (Amendment) Act, 2009**

By the Rubber (Amendment) Act, 2009 [Act No. 4 of 2010], section 3 of the Rubber Act, 1947 is amended: (a) after clause (g), the following clause shall be inserted, namely:— ‘(ga) “processor” means a person who undertakes the processing of rubber;’ ; “(da) three members to be nominated by the Central Government of whom two shall be from the Department of Commerce and one from the Department of Agriculture and Co-operation”.

#### **The Personal Laws (Amendment) Act, 2010**

The Personal Laws (Amendment) Act, 2010 [Act No. 30 of 2010] amends the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956. Amendment has been made in section 19 (b)<sup>29</sup> of the Guardians and Wards Act, 1890. In the Hindu Adoptions and Maintenance

29 A minor, other than a married female, whose father or mother is living and is not, in the opinion of the court, unfit to be guardian of the person of the minor, or”.

Act, 1956 also, amendment has been made in section 8.<sup>30</sup> In the Hindu Adoptions and Maintenance Act, in section 9 also, amendment has been made according to which if the father or the mother, if alive, shall have equal right to give a son or daughter in adoption: Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

#### **The Civil Liability for Nuclear Damage Act, 2010**

The Civil Liability for Nuclear Damage Act, 2010 [Act No. 38 of 2010] was enacted to provide civil liability for nuclear damage and prompt compensation to the victims of a nuclear incident. This Act extends to whole India. It also applies to nuclear damage suffered in or over the maritime areas, economic zone of India, ships registered in India, *etc.* This Act has given definition of the term “Nuclear Damage”.<sup>31</sup> The operator is liable for the nuclear damage caused by nuclear incident which occurred due to defect in nuclear installation. The

- 30 Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:  
Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.”
- 31 S. 2. (g)(i) loss of life or personal injury (including immediate and long term health impact) to a person; or
- (ii) loss of, or damage to, property, caused by or arising out of a nuclear incident, and includes each of the following to the extent notified by the Central Government;
  - (iii) any economic loss, arising from the loss or damage referred to in sub-clauses (i) or (ii) and not included in the claims made under those sub-clauses, if incurred by a person entitled to claim such loss or damage;
  - (iv) costs of measures of reinstatement of impaired environment caused by a nuclear incident, unless such impairment is insignificant, if such measures are actually taken or to be taken and not included in the claims made under sub-clause (ii);
  - (v) loss of income derived from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment caused by a nuclear incident, and not included in the claims under sub-clause (ii);
  - (vi) the costs of preventive measures, and further loss or damage caused by such measures;
  - (vii) any other economic loss, other than the one caused by impairment of the environment referred to in sub-clauses (iv) and (v), in so far as it is permitted by the general law on civil liability in force in India and not claimed under any such law, in the case of sub-clauses (i) to (v) and (vii) above, to the extent the loss or damage arises out of, or results from, ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of, nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.



operator is not liable for nuclear damage if such incident took place due to some natural disaster or an act of armed conflict, terrorism, *etc.*

It is the duty of operator to maintain insurance policies and financial securities before beginning the operation of nuclear installation. Whoever suffers nuclear damage shall be entitled to claim compensation in accordance with the provisions of the Act. The minimum qualification required to become claim commissioner is that he shall or has been district judge or in the central government service not below the rank of additional secretary. Section 14<sup>32</sup> deals with the persons who can claim for compensation. According to section 19, central government has power to establish nuclear damage claim commission for expeditious justice which consists of chairperson and not more than six other members. The tenure of chairperson and other members is 3 years. No person shall, while holding office as a chairperson or a member, act as an arbitrator in any matter. The commission shall prepare, in such form and at such time in each financial year as may be prescribed, an annual report giving full account of its activities during that financial year and submit a copy to the central government.

#### **The Foreign Contribution (Regulation) Act, 2010**

The Foreign Contribution (Regulation) Act, 2010 [Act No. 42 of 2010] was enacted to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest. This Act has given meaning or definition of the term “Foreign Contribution”.<sup>33</sup> The term “Foreign Hospitality” means any offer, not being a

32 (a) a person who has sustained injury; or (b) the owner of the property to which damage has been caused; or (c) the legal representatives of the deceased; or (d) any agent duly authorised by such person or owner or legal representatives.

33 S. 2 (h). “foreign contribution” means the donation, delivery or transfer made by any foreign source,-

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;

(ii) of any currency, whether Indian or foreign;

(iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

*Explanation 1.*- A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

*Explanation 2.* - The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment. No foreign contribution shall be accepted by any candidate for election, correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper, judge, government servant or employee of any corporation or any other body controlled or owned by the government, member of any legislature, political party, *etc.* The central government has power to prohibit any person or organisation not specified in section 3, from accepting any foreign contribution.

Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate. Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate. Every person who has been granted a certificate has to maintain an account of any foreign contribution received and utilized by him. Whoever accepts, or assists any person, political party or organisation in accepting any foreign contribution or any currency or security from a foreign source, in contravention of any provision of the Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

### XIII CONCLUSION

During 2010, few amendments were made in the area of personal laws but there is still need to reform more provisions of the Guardians and Wards Act, 1860. The Nalanda University Act is a good step towards saving and imparting knowledge regarding our ancient culture, heritage, religion, *etc.* In the present day scenario, the role and need of metrology is very important. The Legal Metrology Act, 2009 may protect and promote the consumers in every aspect of life. The stringent penal provisions provided may be enforced and no unfair practices may occur in future. According to the Jharkhand Panchayat Raj Amendment Act, procedure has been enacted to classify schedule castes and schedule tribe people. A new chapter has been introduced to Trade Marks Act, which was quite necessary in the changing time. Civil Liability for Nuclear

*Explanation 3.* - Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.



Damage Act is a good step for providing compensation to the victims of nuclear accidents due to the negligence of the operator. In short, the central legislations of 2010 are to prepare India into the changing circumstances of the world.