29
CENTRAL LEGISLATION

*S Sivakumar**

I INTRODUCTION

THE INGENIOUSNESS of the Parliament wasn't on show in the year 2011. The year, in comparison to past few years, witnessed less legislations. Out of the 22 Acts and a constitutional amendment passed by the Parliament, five were appropriation of accounts in lieu of budget and one was Finance Act for the year.[1] The Constitution (Ninety-Sixth Amendment) Act, 2011 was made for altering the name of the State of Orissa to Odisha and the consequential changes in the other Acts. While in this year remarkable changes have been brought in certain legislations like, National Council for Teacher Education Act, 1993; Transplantation of Human Organs Act, 1994; Cable Television Networks (Regulation) Act, 1995 etc. only minor amendments have been done in other set of legislations such as the Customs Act, 1962, Indian Medical Council Act, 1956 etc. The only prominent legislation enacted this year has been the Coinage Act, 2011.

II MARINE FISHING

The Andaman and Nicobar Islands Marine Fishing (Amendment) Regulation, 2011

Andaman and Nicobar Islands and its coastal areas are the mines of sea products. It had come to the notice that many foreign vessels used to exploit the marine wealth by intruding into this area. In order to curb this menace and to protect the

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* Director Incharge, the Indian Law Institute, New Delhi.

1 The Acts passed in 2011 were: The Coinage Act, 2011, Orissa (Alteration of Name) Act, 2011; The Constitution (Ninety-Sixth Amendment) Act, 2011; The Customs (Amendment And Validation) Act, 2011 ; The Indian Medical Council (Amendment) Act, 2011; The Juvenile Justice (Care and Protection of Children) Amendment Act, 2011; The Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry (Amendment) Act, 2011; The State Bank of India (Subsidiary Banks) Amendment Act, 2011; The Repatriation of Prisoners (Amendment) Act, 2011; The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011; The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011; The Andaman and Nicobar Islands Marine Fishing (Amendment) Regulation, 2011; The National Council for Teacher Education (Amendment) Act, 2011; The State Bank of India (Subsidiary Banks Laws) Amendment Act, 2011; The Transplantation of Human Organs (Amendment) Act, 2011 and The Cable Television Networks (Regulation) Amendment Act, 2011.

ecological balance, the Andaman and Nicobar Islands Marine Fishing Regulation, 2003 was promulgated by the President of India by exercising the powers conferred under article 240 of the Constitution of India. This regulation regulated the fishing by fishing vessels in the sea along with the coastline of the Union Territory of Andaman and Nicobar Islands. The amendment to this regulation[2] was mooted with the purpose of strengthening the coastal security and to streamline system of registration of all fishing vessels under a single law, namely, the Merchant Shipping Act, 1958 as per the decision of the Government of India.

Through the recent amendment, clause (n) in section 2 of the Andaman and Nicobar Islands Marine Fishing Regulation, 2003 (the principal Regulation) got substituted as:

> (n) "registered fishing vessel" means-
> (i) a fishing vessel registered under the Merchant Shipping Act, 1958; or
> (ii) a vessel not registered under the Merchant Shipping Act, 1958, but registered as a fishing vessel under section 9.

An amendment has also been made in section 9[3] of the principal regulation, there by sub-section (1) of section 9 has been substituted as: 'No owner of a vessel, other than a registered fishing vessel, shall use or cause the vessel to be used for the purpose of fishing in the specified area'.

Thus, coastal security in the coastline of the Union territory of Andaman and Nicobar Islands has been secured and registration of all fishing vessels has been streamlined under a single law, namely, the Merchant Shipping Act, 1958.

III EDUCATION

The National Council for Teacher Education (Amendment) Act, 2011

By this amendment Act,[4] sections 1 and 2 of the National Council for Teacher Education Act, 1993 have been amended and new sections 12(A) and 32(dd) have been inserted. This amendment has been made as an emphasis to improve the quality of teacher education system in the country. The principal Act has been enacted with a view for achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. By this amendment, the long title of the principal Act itself has been amended and subsequent to the words "in the teacher education system", the words "including qualifications of school teachers" have been inserted.[5] Hence, the present long title

2 Act No. 2 of 2011.

3 Earlier, s. 9(1) of the principal regulation provided that no owner of a vessel other than a fishing vessel registered under s. 11 of the Marine Products Export Development Authority Act, 1972 shall use or cause to be used for the purposes of fishing the specified area, unless such vessel has been registered as a fishing vessel under the principal regulation.

4 Act No. 18 of 2011.

5 *Id.* s.1

of the Act stands as: An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system including qualifications of school teachers and for matters connected therewith. The change made by this amendment is manifold. Primary change is the exclusion of unqualified teachers.

In section 1 of the principal Act, after sub-section (3), the following sub-section has been inserted:[6]

> (4) Save as otherwise provided in this Act, the provisions of this Act shall apply to -
> (a) institutions;
> (b) students and teachers of the institutions;
> (c) schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education irrespective of the fact, by whatever names they may be called; and
> (d) teachers for schools and colleges referred to in clause (c).

Through this insertion, the ambiguity on the applicability of the Act has been removed and it has become clear that the Act would apply to the institutions, students and teachers of the institutions, schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education irrespective of the fact, by whatever names they may be called; and teachers for schools and colleges referred to in clause (c).

In India, University Grants Commission, the apex body for higher education in the country, prescribes norms and qualifications for the appointment of faculty in higher education. But no such qualification had been made mandatory in the school education sector and it was noted that many of the schools were having teachers without proper qualification. In order to strengthen and enhance the standard of education, it was imperative to have qualified teachers not only at the higher education level but also at the primary, secondary and senior secondary level, and hence, this amendment Act brought these levels under the scrutiny of National Council for Teacher Education (NCTE).

Section 2 of the parent Act has been amended and two new sub-sections (ea) and (ka) have been inserted so as to define "school" and "local authority". In section 2 of the principal Act,-(i) after clause (e), the following clause is inserted, namely:

> (ea) "local authority" means a Municipal Corporation, Municipal Committee, Municipal Council, Zila Parishad, District Board or Nagar Panchayat or Panchayat, or other authority (by whatever name called), legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.

6 *Ibid*.

(ii) after clause (k), the following clause is inserted, namely:

(ka) "school" means any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education, and includes:[7]

(i) a school established, owned and controlled by the Central Government, or the State Government or a local authority;
(ii) a school receiving aid or grants to meet whole or part of its expenses from the Central Government, the State Government or a local authority;
(iii) a school not receiving any aid or grants to meet whole or part of its expenses from the Central Government, the State Government or a local authority.

In section 12 of the principal Act, in clause (d), the words "in schools or" have been omitted. Hence the sub section stands as: 'It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in recognised institution'.

Thereafter, a new section has been inserted in the Act as section 12 A, giving wide powers to the NCTE to determine minimum standards of education of school teachers. After section 12 of the principal Act, 12 A has been inserted:[8] 'For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority: Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government; a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council: Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009'.

In section 32 of the principal Act, in sub-section (2), after clause (d), clause (dd) has been inserted to empower NCTE to make and implement regulations, guidelines, etc in respect of qualifications of teachers.[9]

7 *Id*. s. 2(11) (ka).
8 *Id*. s. 12A.
9 *Id*. s. 32(dd).

The Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry (Amendment) Act, 2011

This Act[10] amends the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry Act, 2008. The parent Act was passed to declare the institution known as the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, to be an institution of national importance and to provide for its incorporation and matters connected therewith. Through this amendment Act, section 28 of the parent Act has been amended by replacing the words "one year", present twice in sub-section 1 with the words "three and one-half years". The section 28 of the Act now reads: "On and from the date of commencement of this Act, every employee holding a post in the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry, before that date, shall hold the post in the Institute by the same tenure, and upon the same terms and conditions of service including remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such post as if this Act had not been passed and shall continue to do so as an employee of the Institute for a period of three and one-half year from the date of the commencement of this Act, unless he, within the said period of three and one-half year, opts not to be an employee of the Institute or until his tenure, remuneration or other terms and conditions of service are duly altered by the regulations'. Hence, the time given to the existing employee for the transfer has now been extended to three and one-half years. Also, the proviso of the said section has been substituted, namely: 'Provided that the employees, who have, or as the case may be, who have not, exercised their option and not transferred out of the Institute as on the date of coming into force of the Jawaharlal Institute of Post-Graduate Medical Education and Research, Puducherry (Amendment) Act, 2011, may exercise their option afresh before the specified period".

IV CONSTITUTIONAL LAW

Orissa (Alteration of Name) Act, 2011

By this Act[11], the name of the State of Orissa has been altered as the State of Odisha. This Act came into effect from 01.11.2011. Sections 4 to 7 of the Act brought the necessary changes in the Constitution of India, where by articles 164 and 273 and first and the fourth schedules were amended so as to replace the word "Orissa" with the word "Odisha".

Section 8 of the amendment Act provides appropriate power to adapt laws to manage the situation due to the change of name. The sub section (1) of section 8 reads:

> For the purpose of giving effect to the alteration of the name of the State of Orissa by section 3, the appropriate Government may, before the expiration of one year from the appointed day, by order, make such adaptations and modifications of any law made before the appointed day, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon

10 Act No. 10 of 2011.
11 Act No. 15 of 2011.

every such law shall have effect subject to the adaptations and modifications so made.

Sub Section (2) of Section 8 further provides that: Nothing in sub-section (1) shall be deemed to prevent a competent Legislature or other competent authority from repealing or amending any law adapted or modified by the appropriate Government under the said sub-section.

Section 9 confers power to construe laws. It provides: "Notwithstanding that no provision or insufficient provision has been made under section 8 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law, may construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority".

Section 10 of the Act provides that where immediately before the appointed day[12] any legal proceedings are pending to which the State of Orissa is a party, the State of Odisha shall be deemed to have been substituted for the State of Orissa in those proceedings. The Act further clarifies in the definitions that 'appropriate Government' means, as respects a law relating to a matter enumerated in list I in the seventh schedule to the Constitution, the Central Government, and as respects any other law, the state government;[13] and the "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or any part of the State of Orissa.[14]

Thus, the State of Orissa became Odisha from 01.11.2011. Though, the change in the name has been brought in the legal proceedings, it is unlikely that the Orissa High Court will change its name to Odisha High Court, as the high court came into existence on 26.07.1948 under the Orissa High Court (Amendment) Order, 1948. It can be changed only by altering the appropriate legislation. Courts, as a matter of fact, generally do not change names. Madras High Court, Bombay High Court and Calcutta High Court established under British royal charter, continue to hold their original names though the city names changed to Chennai, Mumbai and Kolkata, respectively. These three high courts were formed by letters patent dated June 26, 1862, issued by Queen Victoria under the authority of the British Parliament's Indian High Courts Act, 1861.

The Constitution (Ninety-Sixth Amendment) Act, 2011

By section 2 of the Act, in the Eighth Schedule to the Constitution, in entry 15, for the word "Oriya", the word "Odia" has been substituted changing the name of the language used in the erstwhile State of Orissa.

V CUSTOMS LAW

The Customs (Amendment and Validation) Act, 2011

The Customs (Amendment and Validation) Act, 2011[15] which came into effect

12 The appointed day for the purpose of this Act had been notified as 01.11.2011.
13 S.2 (b) of the Act.
14 S. 2 (c) of the Act.
15 Act No. 14 of 2011.

from September 16, 2011 further amends the Customs Act, 1962. Amendment is made in section 28 of the Customs Act, 1962 whereby, after sub-section (10), the following sub-section has been inserted, and it reads thus: "Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section".

VI INDIAN MEDICAL COUNCIL ACT

The Indian Medical Council (Amendment) Act, 2011

The Indian Medical Council (Amendment) Act, 2011[16] amending the Indian Medical Council Act, 1956 came into force on 10.05.2011.[17] Section 3A[18] of the parent Act has been amended and in its sub-section (2),[19] for the words "one year", the words "two years" have been substituted. The amendment Act also repeals the Indian Medical Council (Amendment) Ordinance, 2011. However, notwithstanding the repeal of the Indian Medical Council (Amendment) Ordinance, 2011 anything done or any action taken under the principal Act, as amended by the said ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

VII JUVENILE JUSTICE

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2011

This Act[20] amends the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act amends the sections which provided for removal of children affected with certain diseases such as leprosy, sexually transmitted diseases hepatitis B2 etc. from juvenile homes to treatment centres. It has been felt that separation/ segregation is not necessary for treatment of such children. By virtue of this amendment, sub-section (2) of section 48 of the principal Act got omitted.[21] Further, section 58 of the principal Act is substituted as under:

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16 Act No. 13 of 2011.

17 The Act has been passed on September 8, 2011.

18 S. 3A was inserted by the Indian Medical Council (Amendment) Act, 2010 (Act No. 32 of 2010) w.e.f. 15.05.2010 which provided for power of central government to supersede the council and to constitute a board of governors.

19 The sub-section (2) of s. 3(A) provided that the council shall be reconstituted in accordance with the provisions of s. 3 within a period of one year from the date of supersession of the council under sub-section (1).

20 Act 12 of 2011. The amendment Act became effective from 01.01.2012 vide notification no. SO2879(E) dated 26.12.2011.

21 The sub-section (2) of s. 48 provided that where a juvenile or the child is found to be suffering from leprosy, sexually transmitted disease, hepatitis B, open cases of tuberculosis and such other diseases or is of unsound mind, he shall be dealt with separately through various specialised referral services or under the relevant laws as such.

Transfer of juvenile or child as are mentally ill or addicted to alcohol or other drugs:

(1) Where it appears to the competent authority that any juvenile or child kept in a special home or an observation home or a children's home or a shelter home or in an institution in pursuance of this Act, is a mentally ill person or addicted to alcohol or other drugs which lead to behavioural changes in a person, the competent authority may order his removal to a psychiatric hospital or psychiatric nursing home in accordance with the provisions of the Mental Health Act, 1987 or the rules made thereunder.

(2) In case the juvenile or child had been removed to a psychiatric hospital or psychiatric nursing home under sub-section (1), the competent authority may, on the basis of the advice given in the certificate of discharge of the psychiatric hospital or psychiatric nursing home, order to remove such juvenile or child to an Integrated Rehabilitation Centre for Addicts or similar centres maintained by the State Government for mentally ill persons (including the persons addicted to any narcotic drug or psychotropic substance) and such removal shall be only for the period required for the in-patient treatment of such juvenile or child.[22]

Now the competent authority can move children who are mentally ill or addicted to alcohol etc. to a phychiatric hospital or psychiatric nursing home only if such conditions lead to behavaiour change in the children. On the basis of discharge certificate issued by the psychiatric hospital/ nursing home, the competent authority can remove the children to an integrated rehabilitation centre. The new Act, thus stopped the segregation of disease hit children of juvenile home from other inmates.

VIII BANKING LAWS

The State Bank of India (Subsidiary Banks) Amendment Act, 2011

As per Government of India order, the acquisition of State Bank of Indore by State Bank of India (SBI) has become effective from 26.08.2010. All branches/ offices of State Bank of Indore are now functioning as branches of State Bank of India. Hence the name of "State Bank of Indore" is omitted from the principal Act

22 Explanation.—For the purposes of this sub-section :
(a) "Integrated Rehabilitation Centre for Addicts" shall have the meaning assigned to it under the scheme called "Central Sector Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services" made by the Government of India in the Ministry of Social Justice and Empowerment or any other corresponding scheme for the time being in force;
(b) "mentally ill person" shall have the meaning assigned to it in clause (1) of section 2 of the Mental Health Act, 1987;
(c) "psychiatric hospital" or "psychiatric nursing home" shall have the meaning assigned to it in clause (q) of section 2 of the Mental Health Act, 1987.

of 1959 by this amendment Act of 2011.[23] In sections 2 and 3 of the principal Act, i.e., the State Bank of India (Subsidiary Banks) Act, 1959 some clauses[24] have been omitted.

The State Bank of India (Subsidiary Banks Laws) Amendment Act, 2011

By this amendment,[25] the State Bank of Hyderabad Act, 1956 (SBHA) and the State Bank of India (Subsidiary Banks) Act, 1959 have been amended. Sections 9[26] and 10[27] of the SBHA is amended whereby the power of the Reserve Bank of India is reduced and primacy is given to the Central Government. Similarly, sections 6, 7, 25, 26, 29, 31, 35A are amended to give primacy to the decisions of the Central Government. Section 63 has been substituted by a new section which lays down power of board of directors of subsidiary banks to make regulations after consultation with the state bank and the Reserve Bank and with the previous approval of the Central Government, by notification in the official gazette.

IX FINANCE LAWS

The Finance Act, 2011

It is an Act[28] enacted to give effect to the financial proposals of the Central Government for the financial year 2011-2012. The Act came into force on 01.04.2011. Chapter II deals with Income Tax, chapter III deals with direct taxes, chapter IV deals with indirect taxes and chapter V involves itself with service tax. Chapter six discusses various miscellaneous issues. As far as tax rates are concerned there is an increase in threshold limits. The threshold limit for every individual, HUF, an association of persons, body of individual and artificial juridical persons

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23 Act No. 7 of 2011.

24 a) S.2, cl. (b), sub-cl (ii).
b) S.2, cl. (c), sub-cl (ii).
c) S.2, cl. (d), sub-cl (ii).
d) S.3, cl. (b).

25 Act No. 17 of 2011.

26 In sub-section (4) of s. 9 of the State Bank of Hyderabad Act, 1956 for the words "with the approval of the Reserve Bank", the words "in consultation with the Reserve Bank and with the approval of the Central Government" has been substituted.

27 In section 10 of the State Bank of Hyderabad Act, - (a) in sub-section (1A), for the words "with the approval of the Reserve Bank", the words "in consultation with the Reserve Bank and with the approval of the Central government" shall be substituted; (b) in sub-section (3),- (i) for the words "with the approval of the State Bank and the Reserve Bank", the words "with the approval of the State Bank and the Central Government in consultation with the Reserve Bank" shall be substituted; (ii) for the words "public issue", the words "public issue or rights issue" shall be substituted; (c) in sub-section (3B),- (i) for the words "with the approval of the State Bank and the Reserve Bank", the words "with the approval of the State Bank and the Central Government in consultation with the Reserve Bank" shall be substituted; (ii) for the words with the approval of the Reserve Bank , the words in consultation with the Reserve Bank and with the approval of the Central Government have been substituted.

28 Act No. 8 of 2011.

is being increased from Rs. 160000/- to Rs. 180000/-. The surcharge applicable to a domestic company is being reduced from 7.5% to 5%. No surcharge is applicable on a domestic company having income up to Rs. 1 Crore. Minimum Alternate Tax (MAT) being increased to 18.5% and MAT to be enforced to units in SEZ's. Scope of MAT was widened and it is now applicable to limited liability partnership. Tax rate applicable on distribution of income by mutual fund to corporate sector are increased.

The Act has lowered the qualifying age of senior citizens from 65 years to 60 years and also increased the current exemption limit in such cases. It has provided a higher exemption limit to senior citizens above the age of 80 years. The Act provided impetus to overseas borrowings by facilitating setting up of infrastructure debt funds. It also rationalized the taxation of income distributed by debt mutual funds. A set of counter-measures are given in the Act in relation to jurisdictions with which there is a lack of effective exchange of information.

X TRANSPLANTATION OF HUMAN ORGANS

The Transplantation of Human Organs (Amendment) Act, 2011

In pursuance of clause (1) of article 252 of the Constitution, resolutions were passed by all the Houses of the Legislatures of the States of Goa, Himachal Pradesh and West Bengal to the effect that the Transplantation of Human Organs Act should be amended by the Parliament. Hence, this Act[29] amended the existing law enacted by the Parliament relating to regulation of removal, storage and transplantation of human organs for therapeutic purposes and for prevention of commercial dealings in human organs. It applies, in the first instance, to the whole of the States of Goa, Himachal Pradesh and West Bengal and to all the Union territories and to such other state which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

In the Transplantation of Human Organs Act, 1994, in the long title, for the words "human organs for therapeutic purposes and for the prevention of commercial dealings in human organs", the words "human organs and tissues for therapeutic purposes and for the prevention of commercial dealings in human organs and tissues" have been substituted.[30] Throughout the principal Act [except clause (h) of section 2, sub-section (5) of section 9, sub-section (1) of section 18 and section 19] unless otherwise expressly provided, for the words "human organ" and "human organs", wherever they occur, the words "human organ or tissue or both" and "human organs or tissues or both" have been substituted respectively.[31]

The amendment Act also provides for inclusion of certain definitions in the parent Act. The amendment Act provides that the section 2 of the principal Act, dealing with the various definitions will now include new sub clause (ha) which defines 'human Organ Retrieval Centre' as a hospital;- (i) which has adequate facilities for treating seriously ill patients who can be potential donors of organs in

29 Act No. 16 of 2011.
30 *Ibid*.
31 *Ibid*.

the event of death; and (ii) which is registered under sub-section (I) of section 14 for retrieval of human organs. New sub clause (hb) defines a minor to mean a person who has not completed the age of eighteen years. Sub clause (i) defines 'near relative' as spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter. Sub clause (oa) defines 'tissue' as a group of cells, except blood, performing a particular function in the human body. 'Tissue Bank' is defined as a facility registered under section 14A for carrying out any activity relating to the recovery, screening, testing, processing, storage and distribution of tissues, but does not include a 'blood bank'.[32] No tissue bank, unless registered under this Act, shall carry out any activity relating to the recovery, screening, testing, processing, storage and distribution of tissues.[33] Transplant co-ordinator is defined as a person appointed by the hospital for co-ordinating all matters relating to removal or transplantation of human organs or tissues or both and for assisting the authority for removal of human organs.[34]

The newly added section 3(1A) states that for the purpose of removal, storage or transplantation of such human organs or tissues or both, as may be prescribed, it shall be the duty of the registered medical practitioner working in a hospital, in consultation with transplant co-ordinator, if such transplant co-ordinator is available, (i) to ascertain from the person admitted to the intensive care unit or from his near relative that such person had authorised at any time before his death the removal of any human organ or tissue or both of his body under sub-section (2), then the hospital shall proceed to obtain the documentation for such authorisation in such manner as may be prescribed; (ii) where no such authority as referred to in sub-section (2) was made by such person, to make aware in such manner as may be prescribed to that person or near relative for option to authorise or decline for donation of human organs or tissues or both; (iii) to require the hospital to inform in writing to the 'human organ retrieval centre' for removal, storage or transplantation of human organs or tissues or both, of the donor identified in clauses (i) and (ii) in such manner as may be prescribed.

In section 9 of the principal Act, after sub-section (1), sub-sections shall be inserted, namely:

> (1A) Where the donor or the recipient being near relative is a foreign national, prior approval of the Authorisation Committee shall be required before removing or transplanting human organ or tissue or both:
>
> Provided that the Authorisation Committee shall not approve such removal or transplantation if the recipient is a foreign national and the donor is an Indian national unless they are near relatives.
>
> (1B) No human organs or tissues or both shall be removed from the body of a minor before his death for the purpose of transplantation except in the manner as may be prescribed.

32 S. 2 (ob) of the parent Act.
33 *Ibid*.
34 *Ibid*.

(1C) No human organs or tissues or both shall be removed from the body of a mentally challenged person before his death for the purpose of transplantation.

Explanation.- For the purpose of this sub-section,-
(i) the expression "mentally challenged person" includes a person with mental illness or mental retardation, as the case may be;

(ii) the expression "mental illness" includes dementia, schizophrenia and such other mental condition that makes a person intellectually disabled;

(iii) the expression "mental retardation" shall have the same meaning as assigned to it in clause (r) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

The removal and transplantation of the human organ or tissue or both can be done only with prior approval of the authorisation committee. Section 9 (3A) further provides: 'Notwithstanding anything contained in sub-section (3), where (a) any donor has agreed to make a donation of his human organ or tissue or both before his death to a recipient, who is his near relative, but such donor is not compatible biologically as a donor for the recipient; and(b) the second donor has agreed to make a donation of his human organ or tissue or both before his death to such recipient, who is his near relative, but such donor is not compatible biologically as a donor for such recipient; then (c) the first donor who is compatible biologically as a donor for the second recipient and the second donor is compatible biologically as a donor of a human organ or tissue or both for the first recipient and both donors and both recipients in the aforesaid group of donor and recipient have entered into a single agreement to donate and receive such human organ or tissue or both according to such biological compatibility in the group, the removal and transplantation of the human organ or tissue or both, as per the agreement referred to above, shall not be done without prior approval of the authorisation committee'.

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35 Advisory Committees to advise Appropriate Authority: (1) The Central Government and the State Governments, as the case may be, by notification, shall constitute an Advisory Committee for a period of two years to aid and advise the Appropriate Authority to discharge its functions. (2) The Advisory Committee shall consist of (a) one administrative expert not below the rank of Secretary to the State Government, to be nominated as Chairperson of the Advisory Committee; (b) two medical experts having such qualifications as may be prescribed; (c) one officer not below the rank of a Joint Director to represent the Ministry or Department of Health and Family Welfare, to be designated as Member-Secretary; (d) two eminent social workers of high social standing and integrity, one of whom shall be from amongst representatives of women' s organisation; (e) one legal expert who has held the position of an Additional District Judge or equivalent; (f) one person to represent non-governmental organisations or associations which are working in the field of organ or tissue donations or human rights; (g) one specialist in the field of human organ transplantation, provided he is not a member of the transplantation team. (3) The terms and conditions for appointment to the Advisory Committee shall be such as may be prescribed by the Central Government.

The Act further inserts sections 13A,[35] 13B,[36] 13C,[37] 13D,[38] 14A[39] and 19A.[40] The newly added sections, *inter alia*, provides for establishment of national human organs and tissues removal and storage network and panishment for illegal dealings in human tissues etc.

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36 The section deals with the power of the appropriate authority and lays down that the appropriate authority shall for the purposes of this Act have all the powers of a civil court trying a suit under the CPC, 1908.

37 The section reads: The Central Government may, by notification, establish a National Human Organs and Tissues Removal and Storage Network at one or more places and Regional Network in such manner and to perform such functions, as may be prescribed.

38 The section provides for setting up of a national registry of the donors and recipients of human organs and tissues by the central government and such registry shall have such information as may be prescribed to an ongoing evaluation of the scientific and clinical status of human organs and tissues.

39 The section provides for registration of tissue bank and provides that (1) No Tissue Bank shall, after the commencement of the Transplantation of Human Organs (Amendment) Act, 2011 commence any activity relating to the recovery, screening, testing, processing, storage and distribution of tissues unless it is duly registered under this Act: Provided that any facility engaged, either partly or exclusively, in any activity relating to the recovery, screening, testing, processing, storage and distribution of tissues immediately before the commencement of the Transplantation of Human Organs (Amendment) Act, 2011 shall apply for registration as Tissue Bank within sixty days from the date of such commencement: Provided further that such facility shall cease to engage in any such activity on the expiry of three months from the date of commencement of the Transplantation of Human Organs (Amendment) Act, 2011 unless such Tissue Bank has applied for registration and is so registered, or till such application is disposed of, whichever is earlier. (2) Every application for registration under sub-section (1) shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed. (3) No Tissue Bank shall be registered under this Act unless the Appropriate authority is satisfied that such Tissue Bank is in a position to provide such specialised services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed.

40 The newly inserted section provides for punishment for illegal dealings in human tissues. It reads: Whoever (a) makes or receives any payment for the supply of, or for an offer to supply, any human tissue; or (b) seeks to find person willing to supply for payment and human tissue; or (c) offers to supply any human tissue for payment; or (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human tissue; or (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or (f) publishes or distributes or causes to be published or distributed any advertisement (i) inviting persons to supply for payment of any human tissue; or (ii) offering to supply any human tissue for payment; or (iii) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d); or (g) abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the donation of the human tissues as a near relative or by reason of affection or attachment towards the recipient shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall be liable to fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

XI MISCELLANEOUS

The Coinage Act, 2011

The Coinage Act, 2011[41] has been enacted to consolidate the laws relating to coinage and the mints, the protection of coinage and to provide for the prohibition of melting or destruction of coins and prohibit the making or the possession thereof for issue and for matters connected therewith or incidental thereto. This Act came into existence by repealing (a) the Metal Tokens Act, 1889; (b) the Coinage Act, 1906; (c) the Bronze Coin (Legal Tender) Act, 1918; (d) the Currency Ordinance, 1940; (e) the Small Coins (Offences) Act, 1971. The coins and currencies issued under the above enactments will continue to be deemed to be the coin and continue to be legal tender in payment.[42] This Act mandates that any coin or metal in relation to which any offence under this Act has been committed shall be forfeited to the government.[43]

Under the Act, the government may, by notification (a) establish a mint at any place which may be managed by it or by any other person, which may be authorised for this purpose provided that the mints established before the commencement of this Act shall be deemed to have been established by the government under this sections: where the government is of the opinion that it is necessary or expedient in the public interest so to do, it may authorise the minting of coins by any organisation or government of any foreign country, within or beyond the limits of India and acquire such coins either by way of import or otherwise for issue under its authority; (b) abolish any mint.[44]

The Act further lays down that the coins may be minted at the mints or at any other place authorised under the proviso to section 3 of such denominations not higher than one thousand rupees and of such dimensions and designs and containing such metals or mixed metals of such composition or any other material as may be prescribed by the government.[45] These coins shall be a legal tender in payment or on account[46] and the government may, by notification, call in with effect from such date as may be specified in the notification, any coin from being a legal tender in payment.[47] While section 9 provides power to certain persons to cut, diminished or defaced coins, section 10 provides power to certain persons to cut counterfeit coins. Section 12 prohibits making or melting or destruction of coins and for such acts, punishment extending upto seven years with fine has been provided under the Act.[48] Section 14 attaches prohibition and penalty for unlawful making; issue or possession of pieces of metal to be used as money where as section 15 imposes prohibition and penalty for bringing metal piece for use as coin. Under the Act, no person is allowed to bring by sea or by land or by air into India of any piece of metal to be used as

41 Act No. 11 of 2011.
42 *Id*. s. 28.
43 *Id*. s. 17.
44 *Id*. s. 3.
45 *Id*. s. 4.
46 *Id*. s. 6.
47 *Id*. s. 8.
48 *Id*. s. 12.

coin except with the authority or permission of the government. Whoever contravenes this provision of sub-section shall be punishable with imprisonment which may extend to seven years and with fine.

All actions taken in good faith under this Act is legally protected.[49] All the offences under this Act are cognizable, bailable and non-compoundable [50] and shall be tried summarily.[51] Probation of Offenders Act, 1958 would not to apply to offences under this Act.[52] The repealing of enactments and Ordinance made by virtue of this new Act would not affect:

(a) any other enactment in which the repealed enactment or Ordinance has been applied, incorporated or referred to;
(b) the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;
(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment or Ordinance hereby repealed, and
(d) it would not revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.[53]

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.[54]

49 *Id*. s. 22.
50 *Id*. s. 19.
51 *Id*. s. 21.
52 *Id*. s. 18.
53 *Id*. s. 27.
54 *Id.* s. 25.

Where an offence under this Act has been committed by a company,[55] every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Nothing shall render any person liable to any punishment, 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. Where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer, such director, manager, secretary or other officer of the company shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The Repatriation of Prisoners (Amendment) Act, 2011

The amendment Act[56] amends section 5 of the Repatriation of Prisoners Act, 2003 wherein, in sub-section (2), in clause (c), for the words "martial law", the words "military law" has been substituted. In the erstwhile Act, section 4 dealt with application to the central government for transfer of prisoner's custody from India to other contracting State. While entertaining such a petition, the officer in charge of the prison has to furnish information to the central government and the application would be allowed only when the central government is satisfied *inter alia* that the prisoner has not been convicted for an offence under the martial law.

This amendment is very important because there is very much difference between these two terms. Martial law is law enforcement by the military on a civilian population at times of emergency. Military law is a special kind of law code which military personnel become subject to when they enlist in the military. It would normally be enforced by the military police and courts marshal. Military law does not normally apply to non enlisted personnel. Hence the mistake committed in the drafting of the 2003 Act is corrected by this amendment Act.

The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011

It is an undisputed fact that there had been phenomenal increase in the population of the national capital territory of Delhi owing to migration and other factors resulting in tremendous pressure on land and infrastructure leading to encroachment or unauthorised developments which are not in consonance with the concept of planned development as provided in the master plan for Delhi, 2001 and the relevant Acts and building bye-laws made there under. The master plan for Delhi, 2001 was extensively modified and notified by the central government on 07.02.2007 with

55 Company, under the Act means anybody corporate and includes a firm, society or other association of individuals; and (b) "director", in relation to — (i) a firm, means a partner or proprietor of the firm; (ii) a society or other association of individuals, means the person who is entrusted, under the rules of the society or other association, with the management of the affairs of the society or other association of the individuals, as the case may be.

56 Act No. 6 of 2011.

the perspective for the year 2021 keeping in view the emerging new dimensions in urban development *vis-a-vis* the social, financial and other ground realities. The master plan for Delhi with the perspective for the year 2021 specifically provides for strategies for housing for urban poor as well as to deal with the informal sector: a strategy and a scheme has been prepared by the local authorities in the national capital territory of Delhi for regulation of urban street vendors in accordance with the national policy for urban street vendors and the master plan for Delhi, 2021, and is being implemented. Based on the policy finalised by the Central Government regarding regularization of unauthorised colonies, village abadi area and its extension, the guidelines and regulations for this purpose have been issued.

In pursuance of the guidelines and regulations necessary steps are being taken for regularisation of unauthorised colonies which, *inter alia*, involve scrutiny of layout plans, assessment of built up percentage existed as on the 31.03.2002, identification of mixed use of streets, approval of layout plans, fixation of boundaries, change in land use and identification of colonies not eligible for regularization. However, it is felt that more time is required for proper implementation of the scheme regarding hawkers and urban street vendors and for the regularisation of unauthorised colonies, village abadi area and its extension.

The revised policy for proper arrangements for relocation and rehabilitation of slum dwellers and *jhuggi-jhompri* clusters in the national capital territory of Delhi has been formulated and accordingly, the Delhi Urban Shelter Improvement Board Act, 2010 has been enacted by the Government of National Capital Territory of Delhi and notified with effect from 01.07.2010 to provide for implementation of schemes for improvement of slums and *jhuggi-jhompri* clusters with a view to bring improvement in environment and living conditions, and to prepare housing scheme for such persons. A draft policy regarding farm houses is under consideration in the Delhi Development Authority. Pursuant to the master plan for Delhi, 2021, the zonal development plans in respect of various zones have been notified which provides for regularisation of schools, dispensaries, religious institutions and cultural institutions.

Meanwhile, the national capital territory of Delhi Laws (Special Provisions) Act, 2007 was enacted to make special provisions for the areas of the national capital territory of Delhi for a period up to 31.12.2008 and it ceased to operate after December 31, 2008. The national capital territory of Delhi Laws (Special Provisions) Act, 2009 was enacted in continuation for a period up to 31.12. 2009 to make special provisions for the areas of the national capital territory of Delhi and that Act ceased to operate after the 31.12.2009. The national capital territory of Delhi Laws (Special Provisions) Second Act, 2009 was enacted in continuation of the aforesaid Act for a period up to 31.12.2010 to make special provisions for the areas of the national capital territory of Delhi and that Act ceased to operate after 31.12.2010. It became expedient to have a law in terms of the master plan for Delhi, 2021, in continuation of the said Act for a period up to 31.12.2011 to provide for temporary relief and to minimise avoidable hardships and irreparable loss to the people of the national capital territory of Delhi against any action by the concerned agency in respect of persons covered by the policies referred to above.

The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011[57] was thus introduced to give continued effect, for the period from 01.01.2011 to 31.12.2011 to the various programmes, strategies, schemes, guidelines, policies and plans currently being run by the Delhi Government to address the special problems plaguing the national capital territory of Delhi. [58]

The Act has been aimed to provide temporary relief and minimize avoidable hardship and irreparable loss to the people of NCTD, while facilitating realistic revision of master plan for Delhi (MPD-2021) and ensuring its smooth implementation by maintaining *status quo* in the entire national capital territory of Delhi. Relocation and rehabilitation of slum dwellers and the subsequent urban developments have to be achieved in a sustainable, planned and human manner.

No punitive action can be taken till 31.12.2014 in any area of NCTD provided compliance is made to such directions, as the Central Government may give from time to time. However, no relief shall be available from encroachment on public land, except where explicitly covered under the Act. Punitive action can be taken by the local authorities shall be carried only with the specific approval of the Administrator of Delhi. The Act requires that fundamental safety measures such as structural stability, fire safety, etc. as provided under the relevant building bye laws should strictly be complied with.

The Cable Television Networks (Regulation) Amendment Act, 2011

The Cable Television Networks (Regulation) Amendment Act, 2011[59] came into force on 25.10.2011, thereby repealing Cable Television Networks (Regulation) Amendment Ordinance, 2011 and amending the Cable Television Networks (Regulation) Act, 1995. Section 4 of the amendment Act substitutes the section 4 of the parent Act, thereby laying provisions for registration as a cable operator. The section provides for the eligibility criteria, procedure to apply, processing of application by registering authority, grant of registration and its suspension and revocation by the central government. The amendment Act also replaces the section 4A of the parent Act and lays down that where the central government is satisfied that it is necessary in the public interest so to do, it may, by notification in the official gazette, make it obligatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form[60] through a digital addressable

57 Act No. 5 of 2011.

58 The Parliament on December 14, 2011 passed the "The National Capital Territory of Delhi Laws (Special Provisions) Second Bill, 2011" to make special provisions for the national capital territory of Delhi (NCTD) for a further period of three years from 01.01.2012 to 31.12.2014. This is in continuation of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 which was valid up to 31.12.2011.

59 Act No. 21 of 2011.

60 The explanation (c) to s. 4A lays down that the encrypted in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression unencrypted shall be construed accordingly.

system[61] with effect from such date as may be specified in the notification and different dates[62] may be specified for different states, cities, towns or areas, as the case may be: provided that the date specified in the notification shall not be earlier than six months from the date of issue of such notification to enable the cable operators in different states, cities, towns or areas to install the equipment required for the purposes of this sub-section. The Act further lays down that the central government may direct the authority to specify, by notification in the official gazette, one or more free-to-air channels to be included in the package of channels forming basic service tier and any one or more such channels may be specified, in the notification, genre-wise for providing a programme mix of entertainment, information, education and such other programmes and fix the tariff for basic service tier which shall be offered by the cable operators to the consumers and the consumer shall have the option to subscribe to any such tier. The cable operator shall also offer the channels in the basic service tier on a *la carte* basis to the subscriber at a tariff specified under this sub-section. Under the Act, it has been made obligatory for every cable operator to publicise the prescribed information including but not limited to subscription rates, standards of quality of service and mechanism for redressal of subscribers' grievances in such manner and at such periodic intervals as may be specified by the central government or the authority for the benefit of the subscriber.[63]

The explanation (e) to the section 4(A) explains that pay channel in respect of a cable television network, means a channel for which subscription fees is to be paid to the broadcaster by the cable operator and due authorisation needs to be taken from the broadcaster for its re-transmission on cable. The section 6 of the amendment Act replaces section 8 of the parent Act thereby mandating transmission of certain channels, wherein it has been provided that the central government may, by notification in the official gazette, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and re-transmission of such channels. In areas where digital addressable system has not been introduced in accordance with the provisions of sub-section (1) of section 4A, the notification as regards the prime band is concerned shall be limited to the carriage of two Doordarshan terrestrial channels and one regional language channel of the

61 The explanation (a) to s. 4A provides that the addressable system means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the Conditional Access System and the subscriber management system, on the explicit choice and request of such subscriber, by the cable operator to the subscriber.

62 The Ministry of Information and Broadcasting had fixed June 30, 2012 as deadline for digitization of cable TV in the four metros: Delhi, Mumbai, Kolkata and Chennai but it later extended the date by four months. The switchover date from analog to digital cable TV systems is now October 31, 2012.

63 *Supra* note 59, s. 4(A)5.

State in which the network of the cable operator is located. Section 9 of the amendment Act inserts a new section 10(A) in the parent Act which reads:

> Inspection of cable network and services:
> (1) Without prejudice to the provisions contained in the Indian Telegraph Act, 1885 or any other law for the time being in force, the Central Government or its officers authorised by it or authorised agency shall have the right to inspect the cable network and services.
> (2) No prior permission or intimation shall be required to exercise the right of the Central Government or its authorised representatives to carry out such inspection.
> (3) The inspection shall ordinarily be carried out after giving reasonable notice except in circumstances where giving of such a notice shall defeat the purpose of the inspection.
> (4) On being so directed by the Central Government or its authorised officers or agency so authorised by it, the cable operator shall provide the necessary equipment, services and facilities at designated place or places for lawful interception or continuous monitoring of the cable service at its own cost by or under the supervision of the Central Government or its officers or agency so authorised by it.

The newly inserted section 11 gives power to authorized officer to seize equipment used for operating cable television network wherein he has reason to believe that the provisions of sections 3,4A, 5,6,8, 9 or section 10 have been contravened by the cable operator.[64]

XII CONCLUSION

The survey manifests slackness in legislative activity in the current year. However, the amendments which have been brought up through the National Council for Teacher Education (Amendment) Act, 2011 and the Transplantation of Human Organs (Amendment) Act, 2011 seem to be weighty and imperative. The ambiguity in applicability of the National Council for Teacher Education Act, 1993 has been removed and it has been made clear that the Act would apply over the institutions, students and teachers of the institutions, schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education irrespective of the fact, by whatever names they may be called. It is hoped that by exclusion of the unqualified teachers, the quality of teacher education system in the country shall improve. The instances of illegal dealings in organs had amplified over the years, therefore, to streamline the process of organ transplantation and curb instances of illegal dealings the amendment was much required. At the same time, there was much need to expand the definition of 'near relative', which has been achieved by inclusion of grand-

64 *Id*. s. 10 of the amendment Act.

parents and grand-children in addition to parents, children, brother, sister and spouse. The Cable Television Networks (Regulation) Amendment Act, 2011 now facilitates a mandatory digital server to the viewers. To conclude, this year, the attempts by the legislature have been to remove ambiguities and to bring compelling changes in the existing laws, rather than visualizing new legislations.