

CENTRAL LEGISLATION

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I INTRODUCTION

THE CONSTITUTIONAL set up in India, vests the legislative powers to the competent legislatures at the centre as well as state level, which has been the hallmark of federal governance. The present survey seeks to analyse and identify the important legislations, which has been passed by the Parliament of India – as a body *suprema lex* in the year 2012. These legislations pertain to various issues/ subject matter which has been enumerated in list I of the VII schedule & list III of the VII schedule of the Constitution. However, the constitutional amendment which has been passed by the Parliament in exercise of its constituent power as per provisions of article 368 of the Constitution remains a key legislative development for the year. The survey highlights the key changes/ development of law in the year 2012 through the legislative procedure.

II ADMINISTRATION

Administrators General (Amendment) Act, 2012¹

The Act amends the Administrators-General Act, 1963, which relates to the office of Administrator-General in each state who has the power to administer estates over a certain monetary limit. The original Act states that the Administrator-General of a state has the right to apply for administration of the estate of a deceased person if the value exceeds Rs. 2 lakh. He shall take such a step only if he is of the opinion that there is a possibility of misappropriation, deterioration or waste of such assets. If there is imminent danger of misappropriation or waste of assets over Rs. 2 lakh, the high court may direct the Administrator-General to take possession of such asset or hold, sell or invest such asset according to directions of the court.

Sections 9, 10, 29 and 36 of the Administrators-General Act are amended to enhance the financial limits. In sections 9, 10, 29 and 36 of the Administrators-General Act, 1963, for the words “two lakhs”, wherever they occur, is substituted with the words “ten lakhs”.² The Administrator-General has powers to grant certificates to the family of one who dies leaving assets up to Rs. 10 lakhs excluding deposits in saving bank accounts or provident fund without the need to move the

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1 Act No. 33 of 2012, received the Presidential assent on 19.06.2012.

2 Effective from 01.07.2012 vide Notification No. S.O. 1444(E) dated 29.06.2012.

court. The limit has been raised from time to time over the years. This limit is now raised from Rs. 2 lakhs to Rs. 10 lakhs. This Act will help those who do not have resources and cannot move court to get a probate or letters of administration.

North Eastern Areas (Reorganisation) and other Related Laws (Amendment), Act 2012³

The Act amends the North- Eastern Areas (Reorganisation) Act, 1971 which provided that the Gauhati High Court shall be the common high court for the states of Assam, Nagaland, Mizoram, and Arunachal Pradesh. The amendment was necessitated for setting up of separate high courts for the three states of Tripura, Meghalaya and Manipur. After the commencement of the Act, the Gauhati High Court shall have no jurisdiction in respect of the states of Tripura, Meghalaya and Manipur. The cases before the Gauhati High Court relating to these three states shall be transferred to the respective new high courts. An advocate on the rolls of the Bar Council of the states of Assam, Nagaland, Meghalaya, Manipur and Tripura has been given an option to transfer his name on to the rolls of the new high courts. The advocate has to exercise this option within one year of the commencement of the Act.

III BANKING LAW

The Banking Laws (Amendment) Act, 2012⁴

As the banking companies are now operating in a liberalized environment, the necessity was felt to enable the banking companies in India to raise capital in accordance with the international best practices. After much delay and deliberation the Banking Laws (Amendment) Act, 2012, which seeks to amend the Banking Regulation Act, 1949 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 has been passed by Parliament to achieve this end. This Act seeks to strengthen the regulatory powers of the Reserve Bank of India (RBI) and to further develop the banking sector in India. This Act aims to address the issue of capital raising capacity of banks in India by enabling nationalized banks to raise capital by issue of preference shares or rights issue or issue of bonus shares. It would also enable them to increase or decrease the authorized capital with approval from the government and RBI without being limited by the ceiling of a maximum of Rs. 3000 crores. This Act would also pave the way for new bank licenses by RBI resulting in opening of new banks and branches.

The aforementioned Act amends certain banking laws, *viz.*, the Banking Regulation Act, 1949; the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. The aforementioned Act also made certain consequential amendments in certain other enactments.

3 The North-Eastern Areas (Reorganisation) and other Related Laws (Amendment) Bill, 2012 was introduced in the Lok Sabha on 26.04. 2012. The Bill was passed by Parliament on 16.05.2012.

4 The Banking Laws (Amendment) Bill, 2011 seeks to strengthen the regulatory powers of the Reserve Bank of India. It aims to address the issue of capital raising capacity of banks in India. This Bill was first introduced in 2005 but lapsed with the dissolution of the 14th Lok Sabha.

The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012⁵

This Act amends the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. This amendment Act seeks to further give wide powers to banks and financial institutions to realise the debt.

Earlier, banks were not empowered to accept any immovable property in realisation of the claim against the defaulted borrower in the situation where banks are unable to find a buyer for such assets. The amendment empowers banks and financial institutions to accept the immovable property in full or partial satisfaction of the bank's claim against the defaulting borrower, in those situations when they cannot find a buyer for the securities. It further provides for registration of transactions of securitisation, reconstruction or creation of security interest in the Central Registry, which are subsisting on or before the establishment of central registry. It also gives powers to the central government to extend the time for filing of such transaction with the central registry. The SARFAESI Act, 2002 does not allow securitisation or reconstruction companies to convert the debt of the borrower company into equity. The amendment provides for conversion of any part of debt into shares of a borrower company. It also enables banks or any person to file a caveat so that before granting any stay, the bank or person is heard by the Debt Recovery Tribunal. The amendment also includes multi-state co-operative banks to the existing definition of bank in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It also permits multi state co-operative banks with respect to debts due before or after the commencement of the proposed legislation, to opt to initiate proceedings either under the Multi State Cooperative Societies Act, 2002 or under the Debt Recovery Tribunal. It enables banks and financial institutions to enter into settlement or compromise with the borrower. It also seeks to empower the Debts Recovery Tribunal to pass an order acknowledging any such settlement or compromise.

The Prevention of Money – Laundering (Amendment) Act, 2012⁶

The amendment introduced the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries. It also adds the concept of 'reporting entity' which would include a banking company, financial institution, intermediary or a person carrying on a designated business or profession. Furthermore, it expands the definition of offence under money laundering to include activities like concealment, acquisition, possession and use of proceeds of crime. The Prevention of Money Laundering Act, 2002 levies a fine up to Rs. 5 lakhs. The amendment had removed this upper limit. Part B of the schedule in the existing Act includes only those crimes that are above Rs. 30 lakhs or more whereas part A did not specify any monetary limit of the offence. The amendment brings all the offences under part A of the schedule to ensure that the monetary thresholds do not apply to the offence of money laundering.

5 The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Bill, 2011 was introduced by the Minister of Finance on 12.12.2011.

6 The Prevention of Money Laundering (Amendment) Bill, 2011 was introduced on 27.12.2011.

With regard to appeal provisions, the amendment provides for appeal against the orders of the appellate tribunal directly to the Supreme Court within 60 days from the communication of the decision or order of the appellate tribunal. It also provides for the process of transfer of cases of the scheduled offences pending before a court (which had taken cognizance of the offence) to the special court for trial. In addition, on receiving such cases, the special court shall proceed to deal with it from the stage at which it was committed.

IV CHILD & YOUTH DEVELOPMENT

The Rajiv Gandhi National Institute of Youth Development Act, 2011⁷

The Act declares the Rajiv Gandhi National Institute of Youth Development, Kanchipuram as an institution of national importance. The existing institute at Sriperumbudur was set up in 1993 with the objective of undertaking advanced study in youth related activities. In 2011, the report of the Mentor Group of the Ministry of Youth Affairs recommended the conversion of the existing institute into an institution of national importance. Previous government reports had recommended that it be given the status of a national youth university.

The objectives of the institute are to (a) evolve an integrated approach to youth development, (b) establish a national youth centre, (c) act as a nodal agency for capacity building of stakeholders, and (d) provide for higher education in the field of youth development through employment-oriented courses at the post-graduate level. The main functions of the institute include developing a think tank to carry out policy research and evaluate youth programmes, developing documentation and publication services for youth training, providing technical advice for youth training, and awarding degrees and diplomas at various academic levels.

The Protection of Children from Sexual Offences Act, 2012⁸

This Act aims to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of special courts for trial of such offences. This is for the first time, a special law is passed to address the issue of sexual offences against children and the offences are clearly defined.

The Act under its ambit defines child as a person below the age-group of 18 and is gender neutral and have a clear definition for all types of sexual abuses like sexual harassment, penetrative or non-penetrative sexual abuse, and pornography. The Act provides for stringent punishments, which have been graded as per the gravity of the offence which ranges from simple to rigorous imprisonment of varying periods. The Act provides for the establishment of special courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. It also incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences.

7 The Rajiv Gandhi National Institute of Youth Development Bill, 2011 was introduced in the Lok Sabha on 21.12.2011 by the Minister of Youth Affairs and Sports.

8 Act 32 of 2012.

V CONSTITUTIONAL LAW

Constitution 97th Amendment Act, 2011⁹

The Constitution (Ninety Seventh Amendment) Act 2011 relating to the co-operative societies is aims to encourage economic activities of cooperatives which in turn help progress of rural India. The amendment is helpful to ensure autonomous and democratic functioning of cooperatives and enhance accountability of the management to the members and other stakeholders. As per the amendment the changes effected in the Constitution include: In Part IV, a new Article 43B is inserted, which says: “The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies”. After Part IXA of the Constitution, Part IXB is inserted to accommodate state *vis-a-vis* centre roles including reservation of one seat for SC/ST and two seats for women on the board of every co-operative society; uniformity in the tenure of cooperative board of directors; provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic process and specifying the maximum number of directors as twenty-one; provision for independent professional audit etc.

VI EDUCATION

The Right of Children to Free and Compulsory Education (Amendment) Act, 2012¹⁰

This Act amends the Right of Children to Free and Compulsory Education Act, 2009. This is the first Act made by the Parliament on education in this year. The new Act has amended sections 1, 2, 3, 21, 22 and 25 of the parent Act. It has also inserted a new section, *i.e.*, section 39 which deals with the power of central government to remove difficulties. By amending section 2 of the principal Act, the new Act has given more clarity to the term ‘child with disability’ with proper explanations that widens the net for disabled children bringing under its purview children with severe disability. Such children would have the option of receiving education at home. It gives school management committees an advisory role in minority schools, both aided and unaided, and puts *madrasas* and *Vedic* schools and other institutions providing primarily religious instruction outside the mandate of the Act. The amendment goes beyond the Supreme Court, which kept unaided minority school out of the purview of the Act. As per the amendment, the school management committee will not have the final authority in all minority schools and its role will be advisory.

The Central Educational Institutions (Reservation in Admission) Amendment Act, 2012¹¹

This Act was enacted to amend the Central Educational Institutions (Reservation in Admission) Act, 2006, so as to exempt some central institutions from implementing the SC/ST/OBC quota where it exceeds 50 per cent reservation limit set by the

9 Inserted by the Constitution (Ninety- Seventh Amendment) Act, 2011, s. 2 (w.e.f. 15-02-2012).

10 Act No. 30 of 2012.

11 Act No. 31 of 2012.

Supreme Court. The new Act has amended section 2, 3, 4, 5 and 6 of the parent Act. All the Central Educational Institutions (other than those exempted under section 4 of the Act,) are, presently, required to reserve 27% seats for the OBCs (excluding “creamy layer”), in addition to 15% seats for the SCs and 7.5 % seats for the STs as also to expand their capacity, over a maximum period of three years, from the academic session 2008-09. Difficulties experienced by some of the CEIs, particularly those situated in the North-Eastern states inhabited significantly, in some cases predominantly, by tribal population, and Babasaheb Bhimrao Ambedkar University, Lucknow, which has been reserving 50% seats for the scheduled castes and the scheduled tribes in keeping with the objectives specified in their respective Acts have led to the amendments.

VII FINANCE ACT

The Finance Act, 2012¹²

The Finance Act, 2012 was enacted to give effect to the financial proposals of the central government for the financial year 2012-2013. The new Act has brought substantial changes in the income tax, direct taxes, indirect taxes and service taxes. With regard to the rates of income tax, the new Act stipulates that subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on 01.04.2012, income-tax shall be charged at the rates specified in part I of the first schedule and such tax shall be increased by a surcharge.

The Finance Act proposed an increase in allocation by 21.7 per cent for Right to Education – *Sarva Shiksha Abhiyan* to Rs.25555 crore. Increase in allocation by 29 per cent for *Rashtriya Madhyamik Shiksha Abhiyan* to Rs. 3124 crore was also proposed. It is also proposed to set up a Credit Guarantee Fund to ensure better flow of funds to students. it also proposes creation of a credit guarantee fund to ensure better flow of credit to students and national urban health mission.

VIII INTELLECTUAL PROPERTY RIGHTS

Copyright Amendment Act 2012¹³

The Copyright Amendment Act, 2012 seeks to transmogrify the landscape of various allied rights under the realm of copyright law. It seeks to protect performers rights in a more inclusive manner and also mould the law suitably to address the challenges posed by new technologies. The main amendments are in the following areas:

Rights of performers

The new section 38A incorporated by the amendment bill provides the rights of the performers. As per the section, a performer has the exclusive right to do or authorize the doing of any of the acts in respect of the performance or any substantial part thereof, without prejudice to the rights conferred on authors, namely, to make a sound recording or a visual recording of the performance or to do certain acts in respect of such recording, to reproduce it in any material form including the storing of it in any medium by electronic or any other means, to issue copies of it to the

12 Act No. 23 of 2012.

13 Act No 27 of 2012.

public not being copies already in circulation, to communicate it to the public, to sell or give on commercial rental or offer for sale or for commercial rental any copy of the recording and to broadcast or communicate the performance to the public except where the performance is already a broadcast performance. If a performer consents through a written to incorporation of the performance in a cinematographic work, he shall not object to enjoyment of such right by the producer. Notwithstanding the aforesaid, the performer shall be entitled for making of performances for commercial use.

Cinematographic works and sound recordings

The new provision under section 19 provides that after assignment of a work to be used as part of a cinematographic work or sound recording, the owner of the work will continue to have the right to claim royalties for use of the work outside the cinematographic work or sound recording. Under the amendment, the right to receive royalties of a literary or musical work that forms part of a cinematographic work or sound recording ‘for all forms of exploitation other than the exploitation as part of the film in a cinema hall’ cannot be assigned to any person except to legal heirs or copyright societies as per the amendment under section 18. Furthermore a new definition of visual recording has been added under section 2(xxa), which the definition of cinematographic work by defining it as the recording in any medium, by any method including the storing of it by electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method. Moreover as per the amendment to under section 2(qq), persons appearing casually or incidental and who are not acknowledged anywhere in a film are not considered to be performers.

Digital rights management

The phrase “Rights Management Information” has been defined under a new section 2(xa). It has been defined as title or other information identifying the work or performance, the name of the author or performer, the name and address of the owner of rights, terms and conditions regarding the use of the rights and the number or code that represents the above information but does not include any device or procedure intended to identify the user. Penalty for the infringement of RMI is provided under new section 65B.

Statutory license of cover versions and broadcasting

The new section 31C introduced by the amendment Act provides for the grant of a statutory license for making cover versions of sound recordings. The new section 31D introduced by the amendment allows a broadcasting organization to broadcast a published work through a statutory license.

Exceptions to copyright infringement

Section 52 has been amended to include the certain exceptions to the infringement of copyright.

- a) Reporting of current events has been introduced as fair dealing.
- b) The transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public shall not constitute an infringement of copyright.

- c) Transient and incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy also shall not constitute an infringement of copyright.
- d) Libraries are allowed to make a digital copy of a work if the library has a non-digital copy;
- e) The making of a three-dimensional object from a two dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device does not constitute an infringement of copyright;
- f) Exception to infringement for use by the disabled. The new section 31B is introduced by the amendment provides for the grant of a compulsory license over a work to publish it for the benefit of the disabled. The license may be granted to an organization working primarily for the benefit of the disabled registered under section 12A of the Income Tax Act and recognized under chapter X of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. Furthermore Section 52(1)(zb) provides that the adaptation, reproduction, issue of copies or communication to the public of any work in a format, including sign language, specially designed only for the use of persons suffering from a visual, aural or other disability that prevents their enjoyment of such works in their normal format will not constitute an infringement of copyright.
- g) The importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully shall not constitute an infringement of copyright.

Other important amendments include the amendment of sections 40 and 40A, where the copyrights to foreign works and foreign broadcasts have been brought in line with rights to Indian works. The new section 53 provides for detention of infringing copies of copyrighted works by the customs authorities and related proceedings. The provisions are aimed at bringing objectivity to the process of seizure of infringing copies proposed to be imported into India. The amendment to section 57 seek to extend the scope of moral rights by making moral rights valid even after the term of copyright expires. Furthermore, the amendment also provides that authorship rights may also be claimed by the author's legal representatives.

IX MEDICAL COUNCIL

The Indian Medical Council (Amendment) Act, 2012¹⁴

This Act amends the Indian Medical Council Act, 1956. The new Act amends section 3A of the parent Act which has substituted with the words 'three years' for the words 'two years'. The Indian Medical Council Act, 1956 was enacted for the

14 Act No. 20 of 2012.

purpose of reconstituting the Medical Council of India and to provide for the maintenance of the Indian medical register and for matters connected therewith. The Act was amended, *inter alia*, by the Indian Medical Council (Amendment) Act, 2010 superseding the Medical Council of India for one year with effect from 15.05.10 and providing for the constitution of a board of governors of not more than seven persons to exercise the powers and to perform the functions of the Council under the said Act. Subsequently the said Act was again amended in 2011 through the Indian Medical Council (Amendment) Act, 2011 and the term of board of governors extended for another period of one year, *i.e.*, up to 14.05.12. As per the provisions contained in sub-section (2) of section 3A, as inserted by the amending Act of 2011, the Council had to be reconstituted within a period of two years from the date of its supersession that is latest by 14.05.12.

Meanwhile, the central government initiated a proposal to set up a National Commission for Human Resources for health as an overarching regulatory body which would subsume certain councils like the Medical Council of India and the Dental Council of India in it. Accordingly, the National Commission for Human Resources for Health Bill, 2011 has been introduced in Rajya Sabha and is currently being examined by the Department Related Parliamentary Standing Committee on Health and Family Welfare.

As the entire process for enacting the proposed legislation to set up a National Commission for Human Resources for Health will take some more time and the term of the board of governors constituted under the Indian Medical Council Act, 1956, as amended by the Indian Medical Council (Amendment) Act, 2011, is coming to an end on 14.05.12, immediate action is required to be taken before the said date. In view of the above circumstances, it is considered necessary and expedient to increase the period of reconstitution of the council from two years to three years, thereby automatically increasing the term of office of the Board of Governors by one more year. Therefore, the Medical Council of India could be reconstituted or any overarching regulatory body could be established within the aforesaid extended period. Hence, the above amendment Act.

X NATIONAL INSTITUTES

The National Institute of Mental Health and Neuro-Sciences, Bangalore Act, 2012¹⁵

The object of the National Institute of Mental Health and Neuro-Sciences, Bangalore Act is such as to make the institution one of national importance, and the Parliament declared the institution as an institution of national importance. The institution was registered as a society under the Societies Registration Act, and now by this Act, became a corporate body taking over the assets of then existed society. The central government made provisions for financial aid to the institution and provided various provisions to make it a higher institution of teaching, research and for patient care. It also states the objects and functions of the Institute, the composition of its members, and their powers and functions. The Act also states that NIMHANS will carry out its functions under the control of the central government.

15 President accented on 13.9.2012.

The Institute of Technology (Amendment) Act, 2010¹⁶

The Act amends Institutes of Technology Act, 1961, which declares certain Institutes of Technology to be institutions of national importance. By this amendment, the Act adds nine new Indian Institutes of Technology (IITs). Eight of these are new institutes are in order of their establishment- IIT Ropar in Rupnagar (2008), IIT Bhubaneswar in Bhubaneswar (2008), IIT Gandhinagar in Gandhinagar (2008), IIT Hyderabad in Hyderabad (2008), IIT Patna in Patna (2008), IIT Jodhpur in Rajasthan (2008), IIT Mandi in Mandi (2009) and IIT Indore in Indore (2009).¹⁷ The ninth is Institute of Technology, Banaras Hindu University (IT-BHU), which is currently a faculty under the administration of Banaras Hindu University, Varanasi, which is to be named as: "Indian Institute of Technology (Banaras Hindu University), Varanasi" (IIT-BHU).

All these institutions shall be declared as institutions of national importance. The Act allows the central government to notify zones in the country. Each institute has the duty to support and collaborate with technical education institutions that fall within its respective zone to enhance their quality. It shall also advise the state government and the Union Territory in the matter of technical education within its zone.

The National Institutes of Technology (Amendment) Act, 2012¹⁸

This Act was enacted to amend the National Institutes of Technology Act, 2007. The new Act has amended the title of the parent Act by substituting with the words 'National Institutes of Technology, Science Education and Research' for the words 'National Institutes of Technology'. It has also amended sections 1, 2, 3, 4, 6, 11, 12, 17, 24, 30 and 37 of the parent Act. The new Act has inserted a section, *i.e.*, section 11-A which deals with the Board of Institutes of Second Schedule into the new Act. The Act seeks to consolidate all the existing National Institute of Technology (NITs) in different states being run as a registered society¹⁹ in order to bring uniformity in the governance process across the country, recruitment process, conditions of services, syllabus and educational research as well. The Act in its Schedule III incorporates the newly established Indian Institute of Science Education and Research at Kolkata, Pune, Mohali, Bhopal and Thiruvananthapuram through society.²⁰

XI NATIONAL SECURITY/STRATEGY

The Chemical Weapons Convention (Amendment) Act, 2012²¹

India has taken a welcome move to eliminate all possible chemical weapons by proactively amending its laws. The Chemical Weapons Convention

16 The vision of these NITs encompasses creation of institutes of the highest caliber where teaching and education in basic sciences will be integrated with cutting-edge research.

17 Ministry of Law and Justice - Legislative Department (June 21, 2012).

18 Act No. 28 of 2012.

19 National Institutes of Technology, Science Education and Research (Amendment) Act, 2007, Schedule II .

20 *Id.* Schedule III.

21 Act No. 36 of 2012, the President accented on 11.9.2012.

(Amendment) Act, 2012 amended the Chemical Weapons Convention Act, 2000, which was enacted to give effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. India signed the Convention on 14.01.93. The earlier Act established a national authority to implement the provisions of the Convention. The central government has the power to appoint any officers of the National Authority as enforcement officers. The amendment broadens the scope by allowing the central government to appoint any of its officers as enforcement officers. The earlier Act did not allow any person to transfer or receive specified toxic chemicals from a person who is not a citizen of a state party. The amendment changed the provision by prohibiting transfer from a state which is not party to the convention.

The earlier Act provided for registration of persons engaged in the production, processing, transfer, import, export or use of any toxic chemical or engaged in the production of discrete organic chemical. The amendment provides for specifying threshold limit for registration of chemicals.

The Unlawful Activities (Prevention) Amendment Act, 2012²²

This Act enacted aims to amend the Unlawful Activities (Prevention) Act, 1967. The amendment Act received the assent of the President of India on 03.01.13. According to the statement of objects and reasons, the Act amends the Unlawful Activities (Prevention) Act, 1967 to make it more effective in preventing unlawful activities, and meet commitments made at the Financial Action Task Force (an intergovernmental organization to combat money laundering and terrorism financing). The principal Act, which was enacted in 1967 to provide for the more effective prevention of certain unlawful activities of individuals and associations, was earlier amended in the year 2004 and its scope was widened to fill the legislative vacuum created by the repeal of Prevention of Terrorism Act, 2002. The principal Act was further amended in the year 2008 as well.

The Act amends the original Act to include the definition of 'person'. 'Person' shall include (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals; (vi) every artificial juridical person; (vii) any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses. The Act also covers procurement of weapons, raising funds for terrorist activities and counterfeiting Indian currency.

It enlarges the definition of 'terrorist act' in section 15 and the scope of section 17, which provides punishment for raising funds for terrorist act. It also increases the period (from two to five years), for which an association can be declared as unlawful under section 6 of the Act. Sections 22-A, 22-B, and 22-C have been inserted in the principal Act to include within its scope offences by companies, societies or trusts and to provide punishments therefore. The amendment Act, 2012

22 The Unlawful Activities (Prevention) Amendment Bill, 2011 was introduced on 29.12.11. The Bill was referred to the Standing Committee on Home Affairs on 13.01.12. The Committee tabled its report on 28.03.12. The Act was passed both the Houses by 20.12.12.

also seeks to confer power upon the court to order attachment or forfeiture of property.

XII PERSONAL LAWS

The Anand Marriage (Amendment) Act, 2012²³

The Sikh marriage ceremony is often called *Anand* and commonly called *Anand Karaj*. Though the Anand Marriage Act, 1909 defined *Anand* marriage, was silent about *Anand Kharaj*, the ceremony popularly known among the Sikhs. To remove this anomaly and to remove the ambiguity, the words commonly known as “*Anand Karaj*” was inserted after the words “the Sikh Marriage ceremony called Anand”, in section 2 of the Anand Marriage Act, 1909 (7 of 1909.)

Further, this amendment Act inserted a new section, section 6, for the compulsory registration of the *Anand* marriages. Sub section (i) of Section 6 provides that, for the purposes of facilitation of proof of marriage ceremony (commonly known as *Anand Karaj*) customary among the Sikhs, the state government shall, without prejudice to anything contained in the Hindu Marriage Act, 1955 (25 of 1955.) or any other law for the time being in force, make rules providing that the parties to any such marriage [whether solemnized before or after the commencement of the Anand Marriage (Amendment) Act, 2012], may have the particulars relating to their marriage entered, in such manner and subject to such conditions as may be provided in the said rules, in a marriage register kept by such officer of the State Government or of a local authority authorised by the state government, by notification in the Official Gazette, in this behalf.²⁴

The marriage register shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the statements contained therein and certified extracts there from shall, on an application, be given by the registrar to the parties to the marriage on payment of such fees as may be provided in the rules.²⁵ Notwithstanding anything contained in this section, the validity of any *Anand marriage* solemnized shall in no way be affected by the omission to make an entry in the marriage register.²⁶ Every rule made by the state government under this section shall be laid before the state legislature, as soon as may be, after they are made.²⁷ The parties to the marriage, whose marriage has been registered under this Act, shall not be required to get their marriage registered under any other law for the time being in force (including state Act).²⁸

XIII RAILWAYS

The Railway Property (Unlawful Possession) Amendment Act, 2012²⁹

The public property in India faces encroachment in myriad forms and Indian

23 Received the assent of the President on 07.06.2012 (Act No. 29 of 2012).

24 S. 6 (1).

25 S. 6 (2).

26 S. 6 (3).

27 S. 6 (4).

28 S. 6 (5).

29 Act No. 25 of 2012.

railway is not an exception to it. As the Indian railways continue to hold the largest chunk of land bank of the country, the encroachment over the land (on both sides of the railway track) and land appurtenant thereto depicts the abysmal/ dismal state of affairs. The loss caused in this process and the damages to the public property (collaterally and incidentally) are enormous. It is completely in the hands of those people who are enjoying without benefiting railways. To curb this menace, this amendment is made to strengthen the existing law. This amendment Act was enacted to amend the Railway Property (Unlawful Possession) Act, 1966. This Act amended the original Act to the extent of strengthening the provisions that curb the offence of theft of railway property. The Act further enlarged the ambit of the law to include offences due to abetment or conspiracy, to an offence of theft and misappropriation of railway property. The new Act has amended sections 3, 4 and 8 of the principal Act. In section 3 of the principal Act the marginal heading has been substituted with the words 'penalty for theft, dishonest misappropriation or unlawful possession of railway property'. In the same section, the words 'whoever is found, or is proved' has been substituted with the words 'whoever commits theft, or dishonestly misappropriates or is found, or is proved'. In section 4 of the principal Act, the marginal heading has been substituted with the words 'punishment for abetment, conspiracy or connivance at offences'. Likewise, in section 8 of the principal Act, the marginal heading has been substituted with the words 'inquiry how to be made'.

XIV CONCLUSION

The Constitution of India envisages a definitive role for Parliament of India and its constituent members. However, the legislative process as reflected in the parliamentary enactments on important subjects has certainly failed to bring a cheer in the year 2012. The number of Bills pending before both the Houses of Parliament, various committees, frequent adjournments of the Houses, non- functioning of parliament due to one or other political reasons – has certainly depicts an abysmal state of affairs and political slackness. Nevertheless, the 97th Constitutional Amendment Act is one of the key legislative changes brought in the Constitution of India by the Parliament. The highlight of the parliamentary enactments for the year 2012 remains the legislations like Copyright Amendment Act, 2012 and the various legislations relating to educational institutions, and legislations enhancing social justice like 'the Protection of Children from Sexual Offences Act, 2012.

