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CENTRAL LEGISLATION

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I INTRODUCTION

THE PRESENT Annual Survey of Central Legislation covers enactments either passed in 2016 or enforced in 2016 along with major legislative amendments. One of the significant enactments during the survey period is of Schedule Castes and Schedule Tribes Amendment Act which provides for more stringent provisions for prevention of atrocities against the SCs' and STs'. Further, Juvenile Justice Act, is another strong step to treat juveniles as adults in cases of heinous crimes and also penalize to several new offences against children. The Aadhaar Act, 2016 also assumes importance as it intends to provide targeted delivery of subsidies and services to individuals residing in India by assigning them unique identity numbers.

II AFFORESTATION

The Compensatory Afforestation Fund Act, 2016

The object of this legislation¹ is to provide for establishing the Compensatory Afforestation Fund Management and Planning Authority (CAMPA) at central and state level to credit money received from the user agencies towards the compensatory afforestation, additional compensatory afforestation and penal compensatory afforestation. It further ensures transparent and expeditious utilization of amount realized in lieu of forest land diverted for non-forest purpose. The Act came into force on 3rd August, 2016.

III ARBITRATION AND CONCILIATION LAWS

The Arbitration and Conciliation (Amendment) Act, 2015

The Arbitration and Conciliation (Amendment) Act, 2015² which came into force on October 23, 2015 has proposed several changes to the Arbitration and

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1 No. 38 of 2016.

2 No. 3 of 2016.

Conciliation Act, 1996 (1996 Act). This Amendment was necessitated by the need to make arbitration an effective dispute resolution technique and make India an attractive destination for international commercial arbitration.

Section 29A is the hallmark provision of this Act. This section not only fixes twelve months as a maximum time period for completion of the arbitration but also incentivizes early completion of the proceeding. In case the award is made within a period of six months from the date arbitral tribunal enters upon the reference, the tribunal might receive additional fees as agreed by the parties. It also sanctions unexplained delay by allowing the court to reduction of the fees of the arbitrator if it is found that proceedings are delayed due to 'reasons attributable to the arbitral tribunal'.³ The maximum reduction in fees as provided in the Act is five per cent for each month of such delay. Thus, by awarding timely conclusion of the proceeding and penalizing inordinate delay, this Act seeks to ensure that arbitral proceedings are not unreasonable delayed.

Section 29B also gives an option to fast track the proceedings. The maximum period within which the proceedings have to be completed under this procedure is six months. In order to expedite arbitration proceedings, this Act also clarifies the definition of court. Section 2(e) makes a clear distinction between the definition courts for the purpose of domestic arbitration and that for the purpose of International commercial arbitration.⁴ For domestic arbitration, the court means the district court which is the same as in the 1996 Act. However, for international commercial arbitration, only the high courts have been given the jurisdiction.

Section 8 has been amended to mandate judicial authority to refer the parties to arbitration, notwithstanding any judgment, decree or order of the Supreme Court or any court if a valid arbitration exists.⁵ Also, under section 8(2), a person can approach

3 S. 29A

4 (e) "Court" means—

- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;";

5 The amended section 8(1) reads thus: "A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."

the court to direct the opposite party to produce arbitration agreement or its certified copy, in case the party approaching the court does not have the possession of the agreement.

A new section 11(13) has been inserted in the amended Act that obliges the Supreme Court or the high court or the person or institution designated by such court to dispose off the application made under section 11 for appointment of an arbitrator or arbitrators as expeditiously as possible and preferably within a period of sixty days from the date of service of notice on the opposite party.

Also, under the new section 34(6), the application to challenge the award is to be disposed of by the court within one year. Section 17 has been amended to empower the arbitral tribunal to grant all kinds of interim measures which the court is empowered to grant under section 9, so that courts' interference is minimized. An order passed section 17 and shall be 'enforceable in the same manner as if it is an order of Court'. These provisions ensure that both the courts and the arbitral tribunals work towards early completion of arbitral proceedings.

Neutrality of the arbitrators is ensured by amending section 12(1) of the 1996 Act. According to the amended section any person who is approached for appointment as an arbitrator has to disclose in writing any interest in the subject matter of the dispute or circumstances that would affect his ability to conclude the arbitration within twelve months.

The explanation to section 34(2)(b) of the 1996 Act has been substituted with a new explanation that restricts wide interpretation of one of the most elusive terms in law- public policy. This amendment provides that an award can be challenged on the grounds of public policy only if 'the making of the award was induced or affected by fraud or corruption, or was in contravention with the fundamental policy of Indian law, or was in conflict with the most basic notions of morality or justice'.

These provisions aim at making 'Arbitration a preferred mode for settlement of commercial disputes by making it more user-friendly and cost effective'⁶.

IV CONSTITUTIONAL AMENDMENTS

The Constitution (One Hundred and First Amendment) Act, 2015

The aforementioned amendment received the assent of the President on 8th September, 2016, thereby amended the Constitution of India to give effect to the provisions necessary for Goods and Service Tax regime for the country. It has introduced National Goods and Service Tax in the country from 1st July, 2017. It would replace all the indirect taxes imposed by the central or state government and act as a single tax supply of goods and services from manufacturer to consumer.

6 Amendments to the Arbitration and Conciliation Bill, 2015.

The Constitution (Scheduled Castes) Order (Amendment) Act, 2016

It amends the Constitution (Scheduled Castes) Order, 1950. It adds more communities to the list of Scheduled Castes (SC) from the States of Haryana, Orissa, Kerala, West Bengal and Chhattisgarh. The communities that have been added to the list are as follows:

Haryana : i) Aheria, ii) Aheri, iii) Hari, iv) Heri, v) Thori, vi) Turi and vii) Rai Sikh

Kerala: i) Malayan (in Kannur, Kasaragode, Kozhikode and Wayanad districts), ii) Mannan, iii) Pathiyan, iv) Perumannan, v) Peruvannan, vi) Vannan, and vii) Velan

Chattisgarh: i) Sais, ii) Sahis, iii) Sarathi, iv) Soot-Sarathi, and v) Thanwar have been added to the entry that comprises the communities of i) Ghasi and ii) Ghasia
West Bengal: Chain community has been given SC status across West Bengal. Earlier they were recognized as Sc only in certain districts.

Odisha: i) Bariki and (ii) Kummari communities have been removed from the Schedule.

V INSOLVENCY AND BANKRUPTCY

The Insolvency and Bankruptcy Code, 2016

The object of this Act⁷ is to ‘consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India’⁸.

Under this Act, in case of default in payment of credit, the debtor’s assets are put in the control of creditors. The debtor is given a period of 180 days to decide on the liquidation of assets. In case no decision is taken the assets during this period, are automatically liquidated under the Act. It provides for a time-bound process to resolve insolvency. Section 5(14) defines ‘insolvency resolution process period, as a ‘period of one hundred and eighty days beginning from the insolvency commencement date’.

The Act creates various institutions to facilitate the insolvency proceedings. It creates an Insolvency and Bankruptcy Board constituted under section 188(1) of the Act to regulate the conduct of insolvency agencies and professionals. The Board would consist of a Chairperson, three *ex officio* members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of

7 No. 31 of 2016.

8 Statement of Object, The Insolvency and Bankruptcy Code, 2016.

Law, an *ex officio* member to be nominated by the Reserve Bank of India and five other members to be nominated by the Central Government, of whom atleast three shall be the whole-time members.

Section 207 provides for registration of a specialized cadre of Insolvency Professionals with the Board. Such professionals would be qualified in the field of law, management, insolvency or such other field as specified by the Board. The Insolvency Professional Agencies would be responsible for certifying such professionals.

VII LAWS ON COMMERCIAL MATTERS, ATOMIC ENERGY AND ELECTION

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015

This Act⁹ aims to ensure expeditious litigation of commercial matters to improve ease of doing business in India. A two tier system has been established under the Act. It establishes a commercial court at the district level and a commercial division of the high court to make enforcement of contract and recovery of claims easier by providing a framework to expedite commercial litigation. The commercial court will be established at all places except where high courts have ordinary original civil jurisdiction. Appeals from the commercial courts and commercial divisions would lie to the commercial appellate division. The commercial appellate division would be constituted by the chief justice of each of the high courts, to hear appeals from decisions of the commercial court or commercial division. It would be presided by bench of two judges. These courts will deal with commercial disputes of a specified value, which has been fixed at not less than one crore rupees or such higher value, as may be notified by the Central Government.¹⁰

The Atomic Energy (Amendment) Act, 2015

This amendment amended sections 2 and 14 of the Atomic Energy Act, 1962. It aims to facilitate setting up of new nuclear projects in India by enabling ‘Nuclear Power Corporation of India (NPCIL) to form joint venture companies with other Indian PSUs to meet the additional funding requirements for further expansion of our nuclear power programme, while simultaneously exercising Government control over such joint venture companies’.

This Act redefines government company with reference to paid up capital under section 2 in the following manner:

“(bb) “Government company” means a company in which—

9 No. 4 of 2016.

10 S. 2(1)(i).

- (i) not less than fifty-one per cent. of the paid-up share capital is held by the Central Government; or
- (ii) the whole of the paid-up share capital is held by one or more of the companies specified in sub-clause (i) and which, by its articles of association, empowers the Central Government to constitute and reconstitute its Board of Directors.

With regard to licensing under this Act, it is stipulated that licenses will only be granted to Department of the Central Government or any authority or an institution or a corporation established by the Central Government, or a government company.¹¹ The license will be cancelled as soon as the licensee ceases to be a government company.

The Election Laws (Amendment) Act, 2016

This Act¹² amends the Representation of the People Act, 1950 and the Delimitation Act, 2002. This Act empowers the Election Commission of India (ECI) to carry out delimitation in areas that were exchanged between Bangladesh and India and were affected by the enactment of the Constitution (100th Amendment) Act, 2015. Pursuant to this amendment India had exchanged 111 enclaves in exchange for 51 enclaves of Bangladesh. This Amendment empowers the ECI to delimiting the constituencies so as to exclude the 111 erstwhile Indian enclaves and include the new 51 enclaves transferred to India.

VII MAINTENANCE OF QUALITY STANDARDS, CARRIAGE BY AIR AND DEVELOPMENT OF NATIONAL WATERWAYS

The Bureau of Indian Standards Act, 2016

Section 3 of this Act¹³ establishes Bureau of Indian Standards (BIS) as a 'national standards body for the harmonious development of the activities of standardisation, conformity assessment and quality assurance of goods, articles, processes, systems and services'¹⁴. Thus, services are also included in the standardisation framework of this Act. BIS would be a licensing authority for license or certificate for quality standards. This Act empowers the Union Government to enlist items that would require mandatory certification if it is deemed essential in 'the interest of the public interest, or for the protection of human, animal or plant health, safety of Government, the

11 Ss. 14(1)A and (B).

12 No. 11 of 2016.

13 Act No. 11 of 2016.

14 The Bureau of Indian Standards Act, 2016.

environment, or prevention of unfair trade practices, or national security¹⁵. This Act streamlines the process of certifying quality products and is a positive step towards ensuring consumer interest.

The Carriage by Air (Amendment) Act, 2016

The Act amends the Carriage by Air Act, 1972. It aims to give effect to the Warsaw Convention, 1929; the Warsaw Convention as amended by the Hague Protocol, 1955 and the Montreal Convention, 1999. These Conventions provide legal framework for attributing liability for international carriage of persons, luggage, or goods. The Act also provides for application of the international rules to domestic travel, subject to exceptions and adaptations. This Act allows Central Government to determine the liabilities of the carriers and extent of compensation for damages.¹⁶

The National Waterways Act, 2016

This legislation¹⁷ aims to declare certain inland waterways as national waterways and also provide a framework for regulation and development of these waterways for shipping and navigation. These amendments were recommended by the Department related Parliamentary Standing Committee on Transport, Tourism and Culture and comments of State Governments. This Act declares 106 additional inland waterways, as the national waterways. This Act repeals five Acts namely:

- (a) the National Waterway (Allahabad-Haldia Stretch of the Ganga Bhagirathi Hooghly River) Act, 1982;
- (b) the National Waterway (Sadiya-Dhubri Stretch of Brahmaputra River) Act, 1988;
- (c) the National Waterway (Kollam-Kottapuram Stretch of West Coast Canal and Champakara and Udyogmandal Canals) Act, 1992;
- (d) the National Waterway (Talcher-Dhamra Stretch of Rivers, Geonkhali Charbatia Stretch of East Coast Canal, Charbatia-Dhamra Stretch of Matai River and Mahanadi Delta Rivers) Act, 2008; and
- (e) the National Waterway (Kakinada-Puducherry Stretch of Canals and the Kaluvelly Tank, Bhadrachalam-Rajahmundry Stretch of River Godavari and Wazirabad Vijayawada Stretch of River Krishna) Act, 2008,

These five national waterways are now covered under this Act.

VIII MINES AND MINERALS

The Mines and Minerals (Development and Regulation) Amendment Act, 2016

It amends the Mines and Minerals (Development and Regulation) Act, 1957. It amends the definition of leased area to mean:

15 S. 16(1).

16 S. 8A.

17 No. 17 of 2016.

The area specified in the mining lease within which mining operations can be undertaken and includes the non-mineralised area required and approved for the activities falling under the definition of mine as referred to in clause (i).

This amendment allows dumping of mining waste by mining lessors in adjacent areas even if they do not form a part of the leasehold. This amendment overturns the decision of the Supreme Court in *Goa Foundation v. Union of India*,¹⁸ wherein it was held that “if the mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in such area outside the leased area. This Act also allows of mining leases which have been granted through procedures other than auction. Section 3 of the Act reads as:

In section 12A of the principal Act, in sub-section (6), the following shall be inserted, namely:—

‘Provided that where a mining lease has been granted otherwise than through auction and where mineral from such mining lease is being used for captive purpose, such mining lease may be permitted to be transferred subject to compliance of such terms and conditions and payment of such amount or transfer charges as may be prescribed.

Explanation.—For the purposes of this proviso, the expression “used for captive purpose” shall mean the use of the entire quantity of mineral extracted from the mining lease in a manufacturing unit owned by the lessee.’

IX REGULATION OF REAL ESTATE & INDUSTRIES AND AADHAAR IDENTIFICATION LAWS

The Real Estate (Regulation and Development) Act, 2016

The object of this Act is to regulate and promote the real estate sector, to ensure sale of real estate project, in an efficient and transparent manner, to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal.¹⁹ It establishes the real estate Regulatory Authority as an overseeing authority in matters of real estate. The Act makes registration of real estate projects and real estate agents with the authority mandatory under section 3 of the Act. It also aims to provide an efficient and fast track dispute resolution mechanisms.

The Industries (Development and Regulation) Amendment Act, 2016

18 (2014) 6 SCC 590.

19 Statement of Object, The Real Estate (Regulation and Development) Act, 2016.

This statute amends the Industries (Development and Regulation) Act, 1951. It provides for development and regulation of certain industries including metallurgical, telecommunications, transportation, fermentation (which includes production of alcohol) among others. This Act excludes production of alcohol for potable purposes from the ambit of the principal Act²⁰. This provision implements the judgment of the Supreme Court in *Bihar Distillery v. Union of India*,²¹ wherein the court had held that the power to regulate production of alcohol for industrial use lay with the Centre and power to regulate the production of alcohol for potable purpose lay with the State.

The Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016

This piece of legislation intends to provide targeted delivery of subsidies and services to individuals residing in India by assigning them unique identity numbers, called Aadhaar numbers as a good governance initiative. According to section 3 of this Act, every resident is entitled to obtain an Aadhaar number by 'submitting his demographic information and biometric information by undergoing the process of enrolment'.

The Unique Identification Authority of India is established by the Central Government under section 11 of the Act. This Authority has been made responsible for the processes of enrolment and authentication and performance of such other functions assigned to it under this Act. The authority shall consist of Chairperson, appointed by the Central Government on part-time or full-time basis, two part-time Members, and the chief executive officer who shall act as the Member Secretary of the Authority.²² The Chairperson and Members of the Authority would be 'persons of ability and integrity having experience and knowledge of at least ten years in matters relating to technology, governance, law, development, economics, finance, management, public affairs or administration'.²³

Chapter IV of the Act provides for data protection framework and obliges the Authority to take all 'necessary measures to ensure that the information in the possession or control of the Authority, including information stored in the Central Identities Data Repository, is secured and protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.'²⁴ The Aadhar information can be released in the interest of national security and on the order of a court.²⁵ There are several criticisms against the Act including that pertains to violation of the right to privacy of

20 S.3, The Industries (Development and Regulation) Amendment Act, 2016.

21 AIR 1997 SC 1208.

22 S.12.

23 S. 13

24 S. 28(3)

25 S. 33.

the individuals.

X SCHEDULE CASTES, SCHEDULE TRIBES AND JUVENILE PROTECTION

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015

It²⁶ seeks to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It came into effect from January 26, 2016. The main objective of this Act is to ensure 'more stringent provisions for prevention of atrocities against Scheduled Castes and the Scheduled Tribes'. This Act replaces the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014. This Act attempts to strengthen the anti discrimination law in India by affording more protection to the scheduled castes and the scheduled tribes.

Certain new offences have been added like imposing economic and social boycott,²⁷ forcible tonsuring of head, removing moustaches, painting face or body or any other similar act derogatory to human dignity²⁸. Economic boycott has been defined in section 2(bc) as:

- (i) refusal by a non SC/ST member to work, hire or enter into business with a member of the SC/ST community
- (ii) denial of opportunity to access services by a non SC/ST member to a member of the SC/ST community
- (iii) discriminating against an SC/ST member by refusing to do 'anything on the terms on which things would be commonly done in the ordinary course of business' and also by abstaining from maintaining a professional or business relation.

Apart from these, the other new offences that have been added are, parading any member of the community naked or semi naked,²⁹ garlanding a member of the community with footwear,³⁰ forcing a member to engage in manual scavenging,³¹ sexually exploiting a women belonging to the community,³² forcing a member of the community to vote or not to vote in an unlawful manner,³³ abusing SCs and STs by caste name³⁴ *etc.*

It also provides for victim and witness protection. The Act, under chapter IVA,

26 No.1 of 2016.

27 S. 4(i)(n).

28 S. 4(i)(e).

29 S. 4(1)(d).

30 S. 4(1)(d).

31 S. 4(1)(j).

32 S. 4(1)(j).

33 Ss. 4(1)(k) and (w).

34 S.4(1)(s).

makes it mandatory for the States to specify a scheme for implementing the 'rights and entitlements of victims and witnesses in accessing justice' and providing them protection 'against any kind of intimidation or coercion or inducement or violence or threats of violence'³⁵. The Act also stipulates that the atrocity victims or their dependents have a right to take assistance from the non-government organisations, social workers or advocates, thereby recognizing the role of civil society in preventing atrocities against SCs and STs.

It provides for establishment of an exclusive special court at the district level to try offences. This court shall hear cases on a day to day basis until all witnesses have been examined, unless, there is adequate reason for adjourning the case. In districts where fewer cases are recorded under this Act, the Court of Session may be designated as special court to try the offences under this Act.³⁶ An appeal from any judgment, sentence or order, not being an interlocutory order, of a special court or an exclusive special court lies to the high court.³⁷ This Act aims to provide a better legal framework to deal with discrimination and atrocities against the member of SCs and STs.

The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015³⁸ repealed the Juvenile Justice (Care and Protection of Children) Act, 2000. It came into force from January 15, 2016. This Act has been at the centre of controversy for categorizing offences under three categories, namely, a heinous offence, serious offence and petty offence. A heinous offence is an offence that attracts a minimum penalty of seven years imprisonment under any existing law, a serious offence is penalized with imprisonment between three to seven years and, a petty offence attracts up to three years imprisonment. Unlike its precursor, this Act does not put all offences on the same pedestal and allows juveniles who have committed heinous offences to be tried as adults. This change has been criticized for bringing a regressive legislation that violates the spirit of the United Nations Convention on the Rights of the Child, 1989 (CRC). Under CRC, a child has been defined as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'³⁹. However, the government cited increasing incidents of criminal activity among juveniles as a reason for bringing this change. Heinous offence has been defined as 'offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.'⁴⁰

35 S. 15A.

36 S.14(1).

37 S. 14(A)(1)

38 No. 2 of 2016.

39 Art. 1

40 S. 2(33).

Under section 15 of the Act special provisions have been made for child offenders committing heinous offences in the age group of 16-18 years. A preliminary assessment of child who has completed or is above sixteen years of age has to be made by the Juvenile Justice Board (the board).⁴¹ This assessment cannot be construed as a trial and is 'merely an assessment of the mental and physical capacity of the child and the circumstances in which the offence was committed'. As per section 14(3), such an assessment shall be disposed of by the board within a period of three months from the date of first production of the child before the board. The board after preliminary assessment may pass an order that there is a need for trial of the said child as an adult, and transfer the trial of the case to the 'children's court'⁴² having jurisdiction to try such offences. Though a wide discretion has been given to children's court for deciding the quantum of punishment, they have been barred from awarding life imprisonment or capital punishment.⁴³ This provision is in compliance with article 37(a) of CRC.

Section 19 provides for placing children in a 'place of safety' both during and after the trial till they attain the age of 21 year, after which an evaluation of the child shall be conducted by the Children's Court. After such evaluation, the children's court may either 'decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay' or decide that the child shall complete the remainder of his term in a jail.⁴⁴ An appeal against the decision of the board lies to the children court.

This Act also penalizes several new offences against a child. For example, sale and procurement of children has been made punishable with 'rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees', corporal punishment by personnels of child care institutions is punishable to a fine of ten thousand rupees on first conviction, and thereafter for every subsequent offence, is punishable with imprisonment which may extend to three months or fine or with both.⁴⁵ Also, use of child by militant groups is punishable with rigorous

41 In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of s. 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

42 S. 2(20) defines "Children's Court" as "a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act".

43 S. 21.

44 S. 20(2).

45 S. 82(1).

imprisonment for a term which may extend to seven years and a fine of five lakh rupees and use of child for illegal activities is punishable with rigorous imprisonment which may extend to seven years. Administering intoxicating liquor, narcotic or a tobacco product to a child has been made punishable with rigorous imprisonment of maximum seven years and a fine which may extend up to one lakh rupees.

In yet another progressive move, the Act brought a change in nomenclature and has replaced the term juvenile with 'child' or 'child in conflict with law', 'to remove the negative connotation associated with the word "juvenile"'.

This Act also seeks to streamline adoption procedures for orphan, abandoned and surrendered children. The Central Adoption Resource Authority (CARA) has been given a statutory status.⁴⁶ The function of CARA is to "(a) promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency; (b) to regulate inter-country adoptions; (c) to frame regulations on adoption and related matters from time to time as may be necessary; (d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption; (e) any other function as may be prescribed". The eligibility of the adoptive parents has been stipulated under Section 57 as follows:

(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him. (2) In case of a couple, the consent of both the spouses for the adoption shall be required. (3) A single or divorced person can also adopt, subject to fulfillment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority. (4) A single male is not eligible to adopt a girl child. (5) Any other criteria that may be specified in the adoption regulations framed by the Authority

It also makes registration of all child care institutions 'whether run by a State Government or by voluntary or non-governmental organisations' compulsory under section 41. Despite several criticisms, this Act has attempted to balance the interest of children along with the need to prevent misuse of child care laws.

XI SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

The Anti-Hijacking Act, 2016

This Act⁴⁷ repeals the Anti-Hijacking Act of 1982. It aims to implement the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, and Supplementary Protocol to the Convention at Beijing.

⁴⁶ S. 68

⁴⁷ No. 30 of 2016.

Section 3 of this Act defines hijacking as '[w]hoever unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means, commits the offence of hijacking'. Sections 3(2) and 3(3) further define the activities that can be interpreted as hijacking.⁴⁸ Hijacking has been made a non-bailable offence under the Act.

The Indian courts have jurisdiction in cases of hijacking if the offence is committed within the territory of India; against or on board an aircraft registered in India; on board and the aircraft in which the offence is committed lands in India with the alleged offender still on board; against or on board an aircraft which is for the time being leased without crew to a lessee who has his principal place of business or where he has no such place of business, his permanent residence is in India; by or against a citizen of India; by a stateless person whose habitual residence is in the territory of India; by the alleged offender who is present in India but not extradited under section 11 of the Act.⁴⁹

Section 4 of the Act provides that whoever commits the offence of hijacking shall be given death penalty, in case the act results in the death of hostage or security personnel and life imprisonment in all other cases.

XII MISCELLANEOUS

The Dr. Rajendra Prasad Central Agricultural University Act, 2016

This statute⁵⁰ declares Dr. Rajendra Prasad Central Agricultural University in Pusa, Bihar to be an institution of national importance.⁵¹ This University will be centrally funded. The objective of this University is to:⁵²

- (a) to impart education in different branches of agriculture and allied sciences as it may deem fit;

48 S. 3(2): "A person shall also be deemed to have committed the offence of hijacking specified in sub-section (1), if, such person—

- (a) makes a threat to commit such offence or unlawfully and intentionally causes any person to receive such threat under circumstances which indicate that the threat is credible; or
- (b) attempts to commit or abets the commission of such offence; or
- (c) organises or directs others to commit such offence or the offence specified in clause (a) or clause (b) above;
- (d) participates as an accomplice in such offence or the offence specified in clause (a) or clause (b) above;
- (e) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that such person has committed any such offence or the offence specified in clause (a) or clause (b) or clause (c) or clause (d) above, or that such person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence."

49 S. 7 (2).

50 No. 32 of 2016.

51 S. 2, The Dr. Rajendra Prasad Central Agricultural University Act, 2016.

52 S. 5.

- (b) to further the advancement of learning and conducting of research in agricultural and allied sciences;
- (c) to undertake programmes of extension education in the country with particular attention to the State of Bihar;
- (d) to promote partnership and linkages with national and international educational institutions; and
- (e) to undertake such other activities as it may, from time to time, determine.

The Payment of Bonus (Amendment) Act, 2015

This amendment has been given a retrospective effect from April 1, 2014. Under this Act every employee drawing a salary of rupees twenty one thousand or below is eligible for bonus. Earlier the bonus was available to only employees earning salary of rupees ten thousand and below. Thus, this Act enlarges the net of employees eligible for bonus in consonance with pro-labour policies. Another interesting feature of this amendment is that it does not link payment of bonus to the performance of the employee.

The High Court and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2016

This law amends the High Court Judges (Salaries and Conditions of Service) Act, 1954 and Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. This Act provides that ten years served as an advocate of High Court shall be added to the service of the Judge for computing pension from April 2004.⁵³

The Sugar Cess (Amendment) Act, 2015

This Amendment increases the ceiling on the cess on the production of sugar from rupees 25 per quintal to rupees 200 per quintal. This revenue generated from this increased cess will be used to meet 'the government's expenditure on interventions to ensure payment of dues to sugarcane farmers'.

The Sikh Gurdwaras (Amendment) Act, 2016

This Act repeals the Sikh Gurdwaras Act, 1925 (principal Act) and shall be deemed to have come into force from October 8, 2003. Under section to of this Act which amends section 49 of the principal Act, those who smoke or drink, or shave or trim their beard or hair, will not be permitted to vote in elections to Sikh religious bodies. Thus, this Act bars Sehjdhari Sikhs, who trim or shave their hair from voting in the election to the Sikh Gurdwara Prabandhak Committee and management Committees.

The Appropriation Acts (Repeal) Act, 2016 and the Repealing and Amending Act, 2016

The objects of Appropriation Acts (Repeal) Act, 2016 is to repeal 758 Appropriation Acts [including Appropriation (Railways) Acts and 111 State

53 S.14A, High Court Judges (Salaries and Conditions of Service) Act, 1954.

Appropriation Acts [enacted by Parliament since 1950 to 1976]. This Act, therefore removes redundant and obsolete laws from statute books.

This law was passed in the backdrop of the recommendation of the 248th Report of the Law Commission of India on Obsolete Laws: Warranting Immediate Repeal, wherein the Commission had observed that several Appropriation acts were lying redundant on the Statute Book. Similarly, Repealing and Amending Act, 2016 also aims to repeal a list of laws mentioned in the first schedule of this Act. These two Acts are a part of the governmental policy to repeal obsolete and non functional laws.

The Rights of Persons with Disabilities Act, 2016

The Act came into force on 27 December, 2016. The object of the Act is to give effect to the United Nations Convention on the rights of Person with Disabilities and for matters connected therewith or incidental thereto. It replaces PwD Act 1995, which was enacted 21 years back. The focus of the statute is on nondiscrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities. This Act would help in bringing a paradigm shift in the societal attitude on disability from a social welfare concern to a human rights issue. The principles such as respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons *etc.* are enshrined in the statute.

The Benami Transactions Prohibitions Amendment Act, 2016

The Benami Transactions (Prohibition) Amendment Act, 2016 came into effect from 1 November, 2016. It provides for better regime for curbing the benami transactions by the authorities. The amended act provides for appellate mechanism in the form of adjudicating authority and appellate tribunal.

XIII CONCLUSION

The year 2016 presented notable legislative frameworks to the country. The Constitution (Scheduled Castes) Order Amendment Act added new communities to the list of scheduled castes: Thereby extending the benefits of reservation for upliftment of under privileged communities. It is hoped that the Arbitration and Conciliation (Amendment) Act would surely make India a hub of international commercial arbitration. Further, the laws on atomic energy, anti hijacking of aircrafts, Bureau of Indian Standards *etc.*, will fortunately help in overall development of the country.