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CENTRAL LEGISLATION

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I INTRODUCTION

LAW AS a dynamic subject matter continuously equips itself to the changing social and economic conditions of the country. The legislative developments in the country thus mirror the vibrancy of the democracy. It is the primary responsibility of the legislatures to maintain the dynamic quality of law. The year 2017 witnessed passing of new legislations as well as amendment to few legislations by the Parliament. The following Survey presents an examination of legislative trends at the central level during the year 2017.

II ADMIRALTY JURISDICTION

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

This Act has been promulgated with the objective to “consolidate the laws relating to admiralty jurisdiction, legal proceedings in connection with vessels, their arrest, detention, sale and other matters connected therewith and incidental thereto”.¹ This Act repeals the five archaic admiralty Acts and replaces them with a comprehensive and modern law in sync with the needs of the time.²

Section 3 of this Act confers jurisdiction to decide admiralty and maritime claims on high courts of coastal States. Further, the high court shall have the jurisdiction to settle disputes pertaining to possession/ownership, mortgage of vessel, loss of life or property occurring in direct connection with the operation of the vessel, towage, pilotage *etc.*³

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1 The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

2 S.17. The 5 Acts that have been repealed are:

- the Admiralty Court Act, 1840;
- the Admiralty Court Act, 1861;
- the Colonial Courts of Admiralty Act, 1890;
- the Colonial Courts of Admiralty (India) Act, 1891; and
- the provisions of the Letters Patent, 1865 in so far as they apply to the admiralty jurisdiction of the Bombay, Calcutta Madras High Courts.

3 S. 4.

Chapter three of the Act (dealing with the procedure before high court and the appeals) stipulates that provisions of Civil Procedure Code, 1908 shall be applicable in all proceedings before the court.⁴ Also, the Supreme Court has the power to transfer admiralty proceedings from one high court to another on the application of any party and the high court to which the case is transferred shall hear or determine the matter from the stage where it stood at the time of transfer in the previous high court.⁵ As per this Act, the high court also has the power to pass an order of arrest of vessel *in rem* “for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding”.⁶ This aforementioned power may be exercised if the court has reason to believe that the owner of the vessel is liable.

The Act also emphasizes on ensuring payment of wages by the employer to the employee as section 9 of the Act provides that claim for wages and other amount due to members of vessel, “in respect to their employment”, shall be a priority in maritime lien.

III BANKING AND COMMERCE

The Banking Regulation (Amendment) Act, 2017

This Act replaces the Banking Regulation (Amendment) Ordinance, 2017. This Amendment Act inserts sections 35 AA and 35 AB in the Banking Regulation Act, 1949. The purpose of this Act is to allow Reserve Bank of India (RBI) to “direct banking companies to resolve specific stressed assets by initiating insolvency resolution process”.⁷ This Act has been enacted to relieve the stress being faced by the banking sector because of non-performing assets (NPA). There has been a continuous rise in the percentage of NPAs over the last decade. The NPAs as have increased from 2.3% in 2008 to 7.5% in 2016.⁸

According to section 35 AA, the RBI, under the direction of the Central Government, can issue directions to any banking company to initiate proceedings under Insolvency and Bankruptcy Code, 2016 in case of default.

This enactment along with the Insolvency and Bankruptcy Code (IBC), 2016 and the prior amendments introduced in the ‘Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002’ and the ‘Recovery

4 S.12.

5 S.15.

6 S.5.

7 See, PIB, "The promulgation of Banking Regulation (Amendment) Ordinance, 2017 will lead to effective resolution of stressed assets, particularly in consortium or multiple banking arrangements", May 5, 2017, *available at*: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=161588> (last visited on July 23, 2018).

8 PRS Legislative Research, "Legislative Brief the Banking Regulation (Amendment) Ordinance, 2017" *available at*: <http://www.prsindia.org/uploads/media/Banking%20Ordinance%202017/Legislative%20Brief-%20Banking%20Regulation%20Ordinance.pdf> (last visited on July 25, 2018).

of Debts Due to Banks and Financial Institutions Act, 1993' are a part of a comprehensive plan to ensure timely resolution of stressed assets.⁹

One of the criticisms of this Act is that if RBI is mandated to take decision on individual defaulters, it will dilute its role as a regulator and supervisor by creating a conflict of interest.¹⁰ RBI may have to be cautious of intruding into the operations of individuals banks. RBI has come up with an Action Plan to implement this Act.¹¹ Enlargement of the Oversight Committee (OC) (constituted by the Indian Banks' Association) to include more members is one of the steps taken by RBI to implement this Act.

The National Bank for Agriculture and Rural Development (Amendment) Act, 2017 amended the National Bank for Agriculture and Rural Development Act, 1981. The Act is notified in 2018 and thus the same will be examined in detail in the next Survey.¹² Similarly, the Companies (Amendment) Act, 2017 though passed by the Lok Sabha and Rajya Sabha in July and December 2017 respectively, it has received the assent of the President of India in January 2018. Hence, the Act will be analyzed in the next Survey.

IV WELFARE LEGISLATIONS ON MATERNITY BENEFIT, EMPLOYEES' COMPENSATION AND WAGES

The Employee's Compensation (Amendment) Act, 2017

This Act is a welfare legislation aimed at providing better compensatory schemes for employees. It amends the Employee's Compensation Act, 1923. According to the newly inserted section 17A, an employer needs to inform an employee about his right to obtain compensation electronically as well as in writing. The violation of this provision may lead to a penalty.¹³

The penalty under the 1923 Act has also been increased to a minimum of rupees 50,000 and maximum rupees 1,00,000.¹⁴ Further, section 30A of the 1923 Act which allowed the Commissioner to withholding payments during the pendency of an appeal

9 *Ibid.*

10 Usha Thorat, "Ring-fencing RBI in a new NPA regime" *The Hindu*, May 14, 2017, available at: <https://www.thehindubusinessline.com/opinion/ringfencing-rbi-in-a-new-npa-regime/article9697753.ece> (last visited on July 29, 2018).

11 Jose J. Kattoor, "Reserve Bank of India Outlines the action plan to implement the Banking Regulation (Amendment) Ordinance, 2017", May 22, 2017, available at: https://www.rbi.org.in/Scrips/BS_PressReleaseDisplay.aspx?prid=40518 (last visited on July 28, 2018).

12 The 1981 Act established the National Bank for Agriculture and Rural Development (NABARD) which is responsible for providing and regulating facilities like credit for agricultural and industrial development in the rural areas. The Amended Act increases the capital of NABARD to Rs 30,000 crore. It also provides the central government alone to hold at least 51% of the share capital of NABARD. It also replaces the terms 'small-scale industry' and 'industry in the tiny and decentralised sector' with the terms 'micro enterprise', 'small enterprise' and 'medium enterprise' as defined in the MSME Development Act, 2006.

13 S. 18A.

14 S. 18A (iii).

made by an employer has been repealed by section 5 of the Amending Act. Moreover, the threshold limit for appeals against an order refusing to allow redemption of a half-monthly payment has been increased to rupees ten thousand or such higher amount as specified by the Central Government.¹⁵

The Maternity Benefit (Amendment) Act, 2017

This Act brings laudable changes in the Maternity Benefit Act, 1961 in response to the demands of working women across the country. It extends the maternity leave from twelve to twenty-six weeks. This period is only applicable upto two children. The maternity leave available for third child will be only twelve weeks. The highlighting part of this amendment is that the cost of this leave is to be borne by the employers. Despite it being welfare piece of legislation there exists a strong apprehension that employers may dissuade to award employment opportunities to women workers considering them to be a burden to the organisation at the time of their maternity leave period; leading to gender discrimination in employment sector.

Maternity leave is also available to a woman who legally adopts a child below the age of three months or a “commissioning woman”, *i.e.*, “a biological mother who uses her egg to create an embryo implanted in any other woman”. Such mothers are entitled to a leave of twelve months from the date a child is handed over to them.

This Act also mandates the employer running an establishment of fifty or more employees to provide crèche facility and allow four visits by the woman per day to the crèche. Even after availing maternity leave, an employer may allow a woman to work from home according to the terms determined between the employer and the woman employee.

Payment of Wages (Amendment) Act, 2017

This Act amends the Payment of Wages Act, 1936 and replaces the Payment of Wages Ordinance, 2016. The amendment Act is to permit the employer to pay an employee’s wages: (i) in coin or currency notes; or (ii) by cheque; or (iii) by crediting them into his bank account. However, the notable change is that it removes the requirement of obtaining written authorisation from employees for payment of wages by cheque or through a bank account. The relevant central or state government may specify certain industrial or other establishments where the employer should pay his employees only by cheque or by crediting the wages in his bank account.

V EDUCATIONAL INSTITUTIONS

The National Institutes of Technology, Science Education and Research (Amendment) Act, 2017

The National Institutes of Technology, Science Education and Research (Amendment) Act, 2017 amends the National Institutes of Technology, Science

15 S. 4, the Employee Compensation (Amendment) Act, 2017.

Education and Research Act, 2007 (NITSER Act). It declares certain institutions of technology, science education and research as Institutes of National Importance and provides for research, training and dissemination of knowledge in these institutions. This Act adds the following two institutes to the Second Schedule of the NITSER Act: (i) Indian Institute of Science Education and Research, Tirupati (Andhra Pradesh); and (ii) Indian Institute of Science Education and Research, Berhampur (Odisha).

The Footwear Design and Development Institute Act, 2017

This Act declares Footwear Design and Development Institute (FDDI) an 'Institute of National Importance' under the Ministry of Commerce and Industry, Government of India. The objective of this Act is to "empower the youth of the nation and to help them march alongside the Prime Minister's Skill Development mission and Make in India initiative".¹⁶

According to section 7 of the Act, FDDI shall strive for quality education. It has been empowered to conduct graduate, post graduate, doctoral and post-doctoral degree courses.¹⁷ It may also institute fellowships and confer awards and honorary doctorates.¹⁸ The idea is to promote research and collaboration with national and international institutes in the fields related to footwear and leather products design. It shall also function as a National Resource Centre for "curriculum development, training the trainers and support skill development" in the leather sector.¹⁹

As per section 4(3) of the Act, the Governing Council of the Institute consists of (i) a Chairperson, who is an eminent academician, scientist, or industrialist from the leather sector, nominated by the central government; (ii) the Managing Director, who is an appointee of the central government; (iii) the joint secretaries in the ministries in the central government dealing with leather, retail or fashion sector and the Institute; (iv) a representative of the ministry in the central government dealing with skill development and entrepreneurship; and (v) nine professionals from the industry and academic institutes (*e.g.* the Council for Leather Exports and the National Institute of Design), nominated by the central government.

The Indian Institutes of Information Technology (Public-Private Partnership) Act, 2017

The aim of the Act is to declare certain Indian Institutes of Information Technology established under public-private partnership as institutions of national importance, with a view to develop new knowledge in information technology and to provide manpower of global standards for the information technology industry. The

16 PIB, Footwear Design and Development Institute Act, 2017 making FDDI an 'Institute of National Importance' comes into force, Oct. 16, 2017, *available at*: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=171747> (Last visited on July 29, 2018).

17 S.7(ii) of the Footwear Design and Development Institute Act, 2017.

18 *Id.* at s. 7 (iv).

19 *Id.* at s. 7(xiv).

Act allows new IIITs to be established on a PPP model to grant degrees. It seeks to grant 'institute of national importance' tag to such institutes on the lines of the Indian Institutes of Technology and National Institutes of Technology.

VI DEMONETIZATION

The Specified Bank Notes (Cessation of Liabilities) Act, 2017

The Indian government took the decision to demonetize 500 and 1,000 rupees notes on November 8, 2016. This enactment was to give effect to this aforementioned decision of the Government of India. The Act provides that 500 and 1,000 rupee notes shall cease to be liabilities of the Reserve Bank of India (RBI) from December 31, 2016 and no longer be guaranteed by the central government. It allows holding of notes only till the grace period.

Thereafter, possession of the same by any person not more than ten notes in total, irrespective of the denomination; or not more than twenty-five notes for the purposes of study, research or numismatics maybe held by an individual. Any person holding the specified bank notes will be punished with fine which may extend to Rs. 10,000/- or five times the value of notes possessed, whichever is higher.

VII NATIONAL SECURITY *VIS A VIS* ENEMY PROPERTY

The Enemy Property (Amendment and Validation) Act, 2017

One of the important legislations the year 2017 witnessed is the Enemy Property (Amendment and Validation) Act, 2017. This Act was enacted to amend the Enemy Property Act, 1968 (EPA) and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The primary objective of this amendment is to prevent enemy countries from taking advantage of their assets. This Act was finally passed after preceded by six ordinances with similar subject matter.

In 2005, the Supreme Court in *Union of India v. Raja Mohammed Amir Mohammad Khan*,²⁰ had decided that an Indian citizen is excluded from the definition of an 'enemy' or 'enemy subject' under section 2(b).²¹ In this case the appellant, an Indian citizen, claimed possession of the property that had devolved on him after the death of his father, a citizen of Pakistan. The court remarked that subsequent to the death of the father, the property on account of being inherited by an Indian, ceased to be an enemy property. The court reasoned that a conjoint reading of sections 6, 8 and

20 2005 (8) SCC 696.

21 S. 2(b) before the amendment read as: " "enemy" or "enemy subject" or "enemy firm" means a person or country who or which was an enemy, an enemy subject or an enemy firm, as the case may be, under the Defence of India Act, 1962, and the Defence of India Rules, 1962, 1[or the Defence of India Act, 1971 and the Defence of India Rules, 1971] but does not include a citizen of India; 2[or the Defence of India Act, 1971 and the Defence of India Rules, 1971] but does not include a citizen of India".

18 indicated that the vesting of property in the enemy subject does not divest the enemy of the property. The power of custodian only extends to temporary possession, management and control of the property.

The Enemy Property (Amendment and Validation) Act, 2017 Act modifies the definition of “an enemy subject” under section 2 of EPA to include the legal heirs and successors of an enemy subject. This definition also includes those heirs as well who are citizen of India or citizen of a country which is not an enemy country. This amendment along with the amendment in section 18 of the EPA now prevents the enemy property from being returned to the original owner or his legal heir. This amendment overrides the aforementioned decision of the Supreme Court by precluding the legal heirs including those who are Indian citizens from claiming ownership of the property. It also enlarges the power of the custodian. According to the newly inserted provision section 8A, the custodian now has the power to dispose off the enemy properties by sale or otherwise with the prior permission of the government.

The Amendment Act, by inserting new section 18B to EPA, bars the civil court from entertaining any suit or proceedings with respect to any enemy property covered by the Act and any decision taken by the Central Government or the custodian regarding such a property. From now on, only high court and Supreme Court have the jurisdiction to decide disputes arising out of EPA.²²

Another important feature of this Act is that it applies retrospectively. Section 22 A of the amended Act provides that “the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2017, shall have and shall always be deemed to have effect for all purposes as if the provisions of this Act, as amended by the said Act, had been in force at all material times”. This implies that an individual who may have bought an enemy property prior to the enactment of this amendment may lose claim over such property, even though the previous law allowed such acquisition.

This Act has been criticized for discriminating against Indian citizens on the basis of descent as heirs of citizens having ancestors belonging to enemy nations may be deprived of their right to inherit the property.²³ This according to some is a violation of article 14 of the Constitution, which guarantees the ‘right to equality’ and protects people from any arbitrary administrative or executive actions. However, the government considers it important in the interest of national security.

22 See, s. 14 of the Enemy Property (Amendment and Validation) Act, 2017.

23 Maansi Verma, "How The Central Government Subverted Both Procedure and Good Faith in Passing the Enemy Property Amendment Bill" *The Caravan*, Apr. 8, 2017, available at: <http://www.caravanmagazine.in/vantage/government-subverted-procedure-good-faith-passing-enemy-property-bill> (last visited on July 20, 2018).

VIII MISCELLANEOUS

The Collection of Statistics (Amendment) Act, 2017

This Act amends Collection of Statistics Act, 2008 which was enacted to “facilitate the collection of statistics on economics, demographic, social, scientific and environmental aspects etc”.²⁴ It extends the applicability of the 2008 legislation to Jammu and Kashmir (J&K) on statistics under any entry specified under the Union and Concurrent List of the Constitution.²⁵

This Amendment Act inserts section 3A to the 2008 Act which provides that the Central Government or a State Government or Union Territory Administration shall appoint one of its officers as a nodal officer who shall coordinate and supervise statistical activities. It also allows the Union government to determine the manner of use of such information.

The Punjab Municipal Corporation Law (Extension to Chandigarh) Amendment Act, 2017

This Act further amends the Punjab Municipal Corporation (extension to Chandigarh) Act, 1994. In pursuance of the introduction Goods and Services Tax, it transfers the power to levy Entertainment Tax and Entertainment Duty for Chandigarh to Municipal Corporation of Chandigarh from the central government.

IX CONCLUSION

The Enemy Property (Amendment and Validation) Act, 2017 which makes transfers of enemy property by the enemy void brought comprehensive amendments to the law relating to confiscation of enemy property in India. The Abolition of Research and Development Cess Act, 1986 which provided for levy of 5 % tax for all import of technology, royalties and fee for technical services (which was regarded as duplication to service tax) is another welcome legislative measure. It will be a boon to the huge business entities in the field of drugs, IT, automobiles *etc.* To address the challenges faced by the Indian IT industry and growth of the domestic IT market, The Indian Institutes of Information Technology (Public-Private Partnership) Act, 2017 proposes to establish 20 IIITs on a Not-for-profit Public Private Partnership (N-PPP) basis. It can be hoped that by molding the best class IT human resource, these institutes would certainly contribute significantly to the demand for global competitiveness of vital sectors of the Indian economy and industry.

24 PIB, "Cabinet approves Amending the Collection of Statistics Act, 2008 (7 of 2009)", Feb. 15, 2017, available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=158493> (last visited on July 28, 2018).

25 Schedule VII, Constitution of India, 1950.