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CENTRAL LEGISLATION*S Sivakumar**

I INTRODUCTION

THIS ANNUAL survey of central legislation sets out a meticulous overview and analysis of previous year's legislative developments, *i.e.*, the summary of Acts that were passed in the year 2014. The significant legislation of the year was the passing of Lokpal and Lokayuktas Act that sought to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith. Yet another prominent legislation was the National Judicial Appointments Commission Act that constituted the body National Judicial Appointments Commission (NJAC) replacing the erstwhile collegium system which is responsible for the appointment and transfer of judges to the higher judiciary in India. However, the apex court in *Supreme Court Advocates-on-Record Association v. Union of India*¹ has struck down the Act by holding it unconstitutional and disallowing government's move to take away the power of appointing judges from judges and vesting it on a more transparent body. Further, the other remarkable credit for the Parliament was passing of the Whistle Blowers Protection Act that provides a mechanism for defending the identity of whistleblowers, the persons who make a public interest disclosure on corruption before a competent authority. There are other essential legislations as well, that explore major legal developments of the year, which are dealt in detail below.

II EDUCATION

The National Institute of Design Act, 2014

This Act² declares the Institute of Design, Ahmedabad, to be an institution of national importance for the promotion of quality and excellence in education, research and training in all disciplines relating to design. Chapter I is the definition part and chapter II is on incorporation of the Institute. Section 6 deals with the powers of institute and section 7 states that institute would be open to all races, creeds and classes. Authorities of institute, governing council, their powers, term

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1 Writ Petition (Civil) No. 13 of 2015 decided on 16.10.2015.

2 No.18 of 2014.

of office, vacancies, salary and allowances payable to chairperson and other members of governing council *etc.*, are also provided. The Act also deals with the functions, powers and duties of chairperson, director, dean, registrar *etc.* Section 23 deals with the fund of institute and further the setting up of endowment fund. Accounts and audit, pension and provident fund, appointment of staff, statutes, ordinances *etc.*, are also provided in detail. Section 32 deals with the arbitral tribunal and its powers.

The National Institutes of Technology, Science Education and Research (Amendment) Act, 2014

This Act³ is to amend the National Institutes of Technology, Science Education and Research Act, 2007. The main feature of this Act is the insertion of new section 5A that deals with effect of incorporation of Bengal Engineering and Science University, Shibpur.

The Rani Lakshmi Bai Central Agricultural University Act, 2014

To establish and incorporate a university in the Bundelkhand region for the development of agriculture and for the furtherance of the advancement of learning and pursuit of research in agriculture and allied sciences and declare it to be an institution of national importance, the Rani Lakshmi Bai Central Agricultural University Act, 2014⁴ has been passed.

The first part deals with definitions followed by powers, objects and jurisdiction of the university. Section 10 states that university shall have officers of the university, namely, the chancellor; (2) the vice-chancellor; (3) the deans; (4) the directors; (5) the registrar; (6) the comptroller; (7) the university librarian; and (8) such other officers as may be prescribed by the statutes. The chancellor shall, by virtue of his office, be the head of the university. Further the Act deals with the appointment of the vice-chancellor, the deans, the directors, the registrar, the comptroller *etc.* The Act further deals with the board of management, the academic council, the research council, the extension education council, the finance committee, faculties, the board of studies, other authorities, power to make statutes *etc.*

The Act also has sections to deal with regulations, annual report, annual accounts, conditions of service of employees, procedure of appeal and arbitration in disciplinary cases against students, right to appeal, provident and pension fund, disputes as to constitution of university authorities, constitution of committees, proceedings of the university authorities not invalidated by vacancy, protection of action taken in good faith, mode of proof of university records, power to remove difficulties *etc.* The Act also has a schedule that deals with the statutes of the university.

The School of Planning and Architecture Act, 2014

This Act⁵ establishes and declares Schools of Planning and Architecture as institutions of national importance in order to promote education and research in

3 No. 9 of 2014.

4 No. 10 of 2014.

5 No. 37 of 2014.

architectural studies including planning of human settlements. Chapter I of the Act deals with the declaration of certain schools as institutions of national importance. Chapter II is on establishment and incorporation of Schools of Planning and Architecture. Its objects are stated as:

- (i) to support the establishment and development of Schools of Planning and Architecture;
- (ii) to provide global leadership in the field of architecture, planning and allied fields.

Further the effect of incorporation of schools is provided in section 6.⁶

6 S. 6. On and from the commencement of this Act,—

- (a) any reference to any existing School in any contract or other instrument shall be deemed as a reference to the corresponding School;
- (b) all properties, movable and immovable, of or belonging to every existing School shall vest in the corresponding School mentioned under column (5) of the Schedule;
- (c) all the rights, debts and other liabilities of every existing School shall be transferred to, and be the rights and liabilities of, the corresponding School;
- (d) every person employed by every existing School shall hold his office or service in the corresponding School with the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held if this Act had not been enacted and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:
Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the School in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment, to him by the School, of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees: Provided further that any reference, by whatever form of words, to the Director, Registrar and other officers of an existing School in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Director, Registrar and other officers of the corresponding School;
- (e) every person pursuing, before the commencement of this Act, any academic or research course in every existing School, shall be deemed to have migrated and registered with the corresponding School on such commencement at the same level of study in the School from which such person migrated;
- (f) all suits and other legal proceedings instituted or which could have been instituted by or against an existing School, immediately before the commencement of this Act shall be continued or instituted by or against the corresponding School.

The following sections also deal with powers and functions of School of Planning and Architecture, its way of teaching *etc.* Chapter III deals with the authorities of schools that include board of governors, senate *etc.* Its powers and functions, term of office of vacancies among and allowances payable *etc.* are categorically provided. The further chapter also has provisions dealing with pension and provident fund, appointments, the way statutes and ordinances made *etc.* Chapter V mandates establishment of Council for schools, term of office of vacancies among, and allowances payable to members of council, their functions, powers and so on.

The Central Universities (Amendment) Act, 2014

Through this amendment Act⁷ which received the assent of the President on the December 17, 2014, the Central Universities Act, 2009 is amended. This Act inserted a new section 3B which deals with special provision with respect to State of Bihar.⁸

III REORGANISATION STATE

The Andhra Pradesh Reorganisation Act, 2014

For bifurcation of Andhra Pradesh into Telangana and the residuary Andhra Pradesh state, the present Act has been enacted. Hence, the Andhra Pradesh Reorganisation Act, 2014 is an Act⁹ to provide for the reorganisation of the existing state of Andhra Pradesh and for matters connected therewith. This Act legitimises the formation of new state of Telangana.¹⁰ Under section 5, it is stated that Hyderabad to be common capital for states of Telangana and Andhra Pradesh.

7 No. 35 of 2014.

8 S. 3B (1) states : The Central University of Bihar established under sub-section (4) of section 3 shall be known as the Central University of South Bihar, having its territorial jurisdiction extending to the territory in the south of River Ganges in the State of Bihar, as specified in the First Schedule to this Act.

(2) There shall be established a University, which shall be a body corporate, to be known as the Mahatma Gandhi Central University, having its territorial jurisdiction extending to the territory in the north of the River Ganges in the State of Bihar, as specified in the First Schedule to this Act.”.

9 No.6 of 2014.

10 S. 3 of the Act states that on and from the appointed day, there shall be formed a new State to be known as the State of Telangana comprising the following territories of the existing State of Andhra Pradesh, namely:— Adilabad, Karimnagar, Medak, Nizamabad, Warangal, Rangareddi, Nalgonda, Mahbubnagar, Khammam (but excluding the revenue villages in the Mandals specified in G.O.Ms. No. 111 Irrigation & CAD (LA IV R&R-I) Department, dated the 27th June, 2005 and the revenue villages of Bhurgampadu, Seetharamanagaram and Kondreka in Bhurgampadu Mandal) and Hyderabad districts, and thereupon the said territories shall cease to form part of the existing State of Andhra Pradesh.

Sections 7 and 8 of the Act state that Governor of existing State of Andhra Pradesh to be the common Governor and it is his responsibility to protect the residents of common capital of Hyderabad. Further it is stated that there will be assistance of police forces from Central Government to successor states. As per section 17, the number of seats in the legislative assemblies of the States of Andhra Pradesh and Telangana, on and from the appointed day, shall be 175 and 119, respectively subject to other provisions as laid down in the Act. There are provisions as to the appointment of speaker, deputy speaker for legislative assembly, appointment of chairman and deputy chairman for legislative councils.

The functioning of high court is set out under section 30 that High Court of Judicature at Hyderabad would be common high court till establishment of High Court of Andhra Pradesh. Section 31 states that subject to the provisions of section 30, there shall be a separate High Court for the State of Andhra Pradesh (hereinafter referred to as the High Court of Andhra Pradesh) and the High Court of Judicature at Hyderabad shall become the High Court for the State of Telangana (hereinafter referred to as the High Court at Hyderabad). Section 31(2) states that the principal seat of the High Court of Andhra Pradesh shall be at such place as the President may, by notified order, appoint. Further, notwithstanding anything contained in sub-section (2), the judges and division courts of the High Court of Andhra Pradesh may sit at such other place or places in the State of Andhra Pradesh other than its principal seat as the chief justice may, with the approval of the Governor of Andhra Pradesh, appoint. The following provisions deal with the appointment of judges of Andhra Pradesh High Court, their jurisdiction, powers, special provision relating to the bar council, advocates, practice and procedure in Andhra Pradesh High Court, form of writs and other processes and so on.

The authorisation of expenditure of Telangana state is provided under section 46 of the Act that states that the award made by the 13th Finance Commission to the existing state of Andhra Pradesh would be apportioned between the successor states by the Central Government on the basis of population ratio and other parameters subject to other provisions.

The subsequent sections are on apportionment of assets and liabilities. This part deals exhaustively about arrears of taxes, right to recover loans and advances, investments and credits in certain funds, assets and liabilities of state undertakings, public debt, floating debt, provident fund, pensions, contracts, apportionment of assets or liabilities by agreement, power of central government to order allocation or adjustment in certain cases and so on.

Further, there are provisions for various companies and corporations wherein the powers and responsibility of Andhra Pradesh State Financial Corporation, temporary provisions as to continuance of certain existing road transport permits, special provisions relating to retrenchment compensation, provision as to income-tax are dealt with. There are also sections provided on provisions relating to All-India Services, wherein setting up of advisory committees, power of central government to give directions, provision for employees of public sector undertakings, provisions as to state public service commission. The management

and development of water resources are also given. Section 84 deals with the constitution of apex council for Godavari and Krishna river water resources and their management boards. Further, provisions deal with jurisdiction of the board, power of the board to make regulations, allocation of water resources and so on.

Part X is on infrastructure and special economic measures. Section 92 categorically states that successor states need to follow principles, guidelines, *etc.*, issued by Central Government. Section 94 deals with the fiscal measures including tax incentives.¹¹ There is also provisions on access to higher education, wherein it emphasis on equal opportunities to be given for quality higher education to all students. Further the Act has also schedules from 1 to 13.

1V PUBLIC HEALTH

The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014

The amendment to the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) has been a much-awaited one. There was long felt demand to facilitate easy access to pain relievers for millions. The present amendment¹² received the assent of the President on the March 7, 2014. The amendments make significant and vital changes for medical access to narcotic drugs by getting rid of obstructions that date back to 1985, when the Act was first introduced. The amendments also incorporates provisions to advance treatment and care for people reliant on drugs, moving away from abstinence oriented services to take care of drug dependence as a persistent, however controllable form. The amendments loosened up limitations placed by the Act on essential narcotic drugs (morphine, fentanyl and methadone), making them more available for applying in ache reprieve and palliative care.¹³

11 S. 94. (1) The Central Government shall take appropriate fiscal measures, including offer of tax incentives, to the successor States, to promote industrialisation and economic growth in both the States.

(2) The Central Government shall support the programmes for the development of backward areas in the successor States, including expansion of physical and social infrastructure.

(3) The Central Government shall provide special financial support for the creation of essential facilities in the new capital of the successor State of Andhra Pradesh including the Raj Bhawan, High Court, Government Secretariat, Legislative Assembly, Legislative Council, and such other essential infrastructure.

(4) The Central Government shall facilitate the creation of a new capital for the successor State of Andhra Pradesh, if considered necessary, by denotifying degraded forest land.

12 No. 16 of 2014.

13 In s. 9 of the principal Act,— (a) in sub-section (1), in clause (a),— (i) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iiiia) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw produced from plants from

The amendment also removed the NDPS Act's imposition of a mandatory death sentence in case of a repeat conviction for trafficking large quantities of drugs, giving courts the discretion to use the alternative sentence of 30 years imprisonment for repeat offences.¹⁴ The another amendment is under the chapter VA of the principal Act, where the heading "forfeiture of property derived from, or used in illicit traffic", was substituted to the heading "forfeiture of illegally acquired property." This is with a view to improve treatment and care for people dependent on drugs, open up the processing of opium and concentrated poppy straw to the private sector, and to strengthen provisions related to the forfeiture of property of persons arraigned on charges of drug trafficking. Further, the amendment increased the punishment for 'small quantity' offences from a maximum of six months to one year imprisonment which can be seen in amendments of sections 15, 17, 18, 20, 21, 22, 23 etc.

V ANTI-CORRUPTION

The Whistle Blowers Protection Act, 2011

In India, like any other there, here have been several instances of threatening, harassment and even murder of various whistleblowers. Hence, the legislatures decided to develop a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to provide adequate safeguards against victimization of the person making such complaint. The Whistle Blowers Protection Act, 2011¹⁵ received the assent of the President on the May 9, 2014.

which no juice has been extracted through lancing;". (ii) after sub-clause (v), the following shall be inserted, namely:— (va) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs: Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier."; (b) in sub-section (2), after clause (h), the following clause shall be inserted, namely:— "(ha) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of essential narcotic drugs, the authorities by which such licence or permit may be granted and the fees that may be charged therefor;".

14 In s.31A of the principal Act, in sub-section (1), for the words "shall be punishable with death", the words and figures "shall be punished with punishment which shall not be less than the punishment specified in section 31 or with death" shall be substituted.

15 No. 17 of 2014.

Under the definition part the terms like complainant, disclosure, public authority, public servant *etc.* are defined appropriately. The subsequent part deals with the characteristics and requirement of public interest disclosure. It states that every disclosure shall be made in good faith and the person making disclosure shall make a personal declaration stating that he reasonably believes that the information disclosed by him and allegation contained therein is substantially true. This shall be made in writing or by electronic mail or electronic mail message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents. Section 4(6) deals with anonymous complainant against whom no action would be taken.¹⁶

The inquiry in relation to public interest disclosure is yet another vital topic of this Act. This exhaustively deals with the powers and functions of competent authority on receipt of public interest disclosure. This section states that the competent authority shall, upon receipt of the complaint and concealing the identity of the complainant, or the public servant in the first instance, make discreet inquiry, in such manner and within such time as may be prescribed, to ascertain whether there is any basis for proceeding further to investigate the disclosure. It is also stated categorically that while seeking comments or explanations or report, the competent authority shall not reveal the identity of the complainant or the public servant and direct the head of the department of the organisation concerned or office concerned not to reveal the identity of the complainant or public servant unless complied with the conditions stipulated under the Act.¹⁷ After the enquiry if the complaint is true, adequate actions would be taken. Section 6 (2) deals with the matters that are not to be inquired by competent authority.

The powers of competent authority that is provided under chapter IV states that the competent authority shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (CPC). It further states that the competent authority shall be deemed to be a civil court for the purpose of section

16 No action shall be taken on public interest disclosure by the competent authority if the disclosure does not indicate the identity of the complainant or public servant making public interest disclosure or the identity of the complainant or public servant is found incorrect or false.

17 Provided that if the competent authority is of the opinion that it has, for the purpose of seeking comments or explanation or report from them under sub-section (3) on the public disclosure, become necessary to reveal the identity of the complainant or public servant to the Head of the Department of the organisation or authority, board or corporation concerned or office concerned, the Competent Authority may, with the prior written consent of the complainant or public servant, reveal the identity of the complainant or public servant to such Head of the Department of the organisation or authority, board or corporation concerned or office concerned for the said purpose: Provided further that in case the complainant or public servant does not agree to his name being revealed to the Head of the Department, in that case, the complainant or public servant, as the case may be, shall provide all documentary evidence in support of his complaint to the competent authority.

195 and chapter XXVI of the Cr PC and every proceeding before the competent authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of IPC. Section 8 deals with certain matters that are exempted from disclosure. Moreover the Act has section 10 that states that competent authority can take assistance of police authorities, *etc.*, in certain cases.

There are further sections that categorically deal with the procedures to be adopted for the protection to the persons making disclosure. Various safeguards are provided to protect the whistle blower and anyone associated to that such as, protection of witnesses and other persons, protection of identity of complainant.¹⁸ The competent authority has also power to pass interim orders. The Act further deals with offences and penalties, wherein there is penalty for furnishing incomplete or incorrect or misleading comments or explanation or report, penalty for revealing identity of complainant, punishment for false or frivolous disclosure, punishment to head of department in certain cases, offences by companies *etc.*

The Lokpal and Lokayuktas Act, 2013

Yet another anti-corruption Act of the Indian Parliament is, the Lokpal and Lokayuktas Act, 2013¹⁹ which is enacted with a view to provide for the establishment of a body of Lokpal for the union and Lokayukta for states to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The definition part and chapter II deal with establishment of Lokpal, wherein the composition,²⁰ appointment, qualification, term of office, salary allowances and other conditions of service of chairperson and members are provided.

Further, it deals with inquiry wing that is constituted by the Lokpal. The Central Government shall make available such number of officers and other staff from its ministries or departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act. Thereafter, the Act sets out the prosecution wing, which would be headed by the director of prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal. Under chapter V, section 13 states that expenses of Lokpal to be charged on consolidated

18 S. 11 states that the Central Government shall ensure that no person or a public servant who has made a disclosure under this Act is victimised by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry under this Act.

19 No. 1 of 2014.

20 S. 3(2) states: The Lokpal shall consist of— (a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and (b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members: Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

fund of India. Chapter VI states that jurisdiction of Lokpal to include Prime Minister, ministers, members of Parliament, groups A, B, C and D officers and officials of Central Government.

Section 20 states that the Lokpal on receipt of a complaint, order (a) preliminary inquiry against any public servant by its inquiry wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter; or (b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a *prima facie* case. After the preliminary inquiry, the report would be submitted to the Lokpal. A bench consisting of not less than three members of the Lokpal shall consider every report received from the inquiry wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a *prima facie* case and proceed.²¹ As per section 20 (4), the inquiry shall ordinarily be completed within a period of ninety days. The section further mandates that once Lokpal direct its prosecution wing to initiate prosecution in the special court in respect of the cases investigated by the agency, it can pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit. Further the website of the Lokpal shall, display to the public, the status of number of complaints pending before it or disposed of by it. Likewise, Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the special court. Section 22 states that Lokpal may require any public servant or any other person to furnish information also, Lokpal has the power to grant sanction for initiating prosecution. The Act also has provisions for action on investigation against public servant being Prime Minister, ministers or members of Parliament.²²

Further, there are sections dealing with the powers of Lokpal that include supervisory powers, power to search and seizure, utilise services of officers of central or state government, provisional attachment of assets, confirmation of attachment of assets, confiscation of assets, proceeds, receipts and benefits arisen

21 S. 20 (3) states that it is proceeded with one or more of the following actions, namely:—

- (a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;
- (b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;
- (c) closure of the proceedings against the public servant and to proceed against the complainant under section 46 of the Act.

22 S. 24: Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

or procured by means of corruption in special circumstances, power to recommend transfer or suspension of public servant connected with allegation of corruption, to give directions to prevent destruction of records during preliminary inquiry, power to delegate *etc.* In short, Lokpal have powers of civil court in various cases. Further it states that special courts to be constituted by Central Government and letter of request to a contracting state in certain cases.²³

There are also sections pertaining to complaints against chairperson, members and officials of Lokpal. Section 37 categorically states that the chairperson or any member shall be removed from his office by order of the president on grounds of misbehaviour after the supreme court, on a reference being made to it by the president on a petition signed by at least one hundred members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the chairperson or such member, as the case may be, ought to be removed on such ground.²⁴

The assessment of loss and recovery thereof by special court is dealt along within the next chapter XII which deals with budget, grants by Central Government, annual statement of accounts, furnishing of returns, *etc.*, to Central Government. This legislation mandates that every public servant shall declare the assets. Section

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- 23 S. 36 (1): Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—
- (i) examine the facts and circumstances of the case;
 - (ii) take such steps as the Special Court may specify in such letter of request; and
 - (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
- 24 S. 38 (1) Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.
- (2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.
 - (3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—
 - (a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

45 states that if any public servant wilfully or for reasons which are not justifiable, fails to— (a) to declare his assets; or (b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished, then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means: Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

The next part is on offences and penalties. Section 46 (1) states that there would be prosecution for false complaint and payment of compensation, *etc.*, to public servant. Likewise, the false complaint made by society or association of persons or trust is an offences included in the Act. There are also sections that have provisions on Lokpal to function as appellate authority for appeals, protection of action taken in good faith by any public servant, protection of action taken in good faith, members, officers and employees of Lokpal to be deemed as public servants, bar of jurisdiction, limitation to apply in certain cases, legal assistance to be granted by Lokpal to defend his case before the Lokpal, power to make rules *etc.*

The establishment of the Lokayukta is envisaged under section 63. It states that every state shall establish a body to be known as the Lokayukta for the state, if not so established, constituted or appointed, by a law made by the state legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act.

VI TRADE AND INDUSTRY

The Merchant Shipping (Amendment) Act, 2014

This Act²⁵ amends the Merchant Shipping Act, 1958. It defined anti-fouling system as a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms. The amendments have been done on provisions relating to control of harmful anti-fouling systems on ships. Control of anti-fouling systems are done by adding section 356 R that every Indian ship and other ships which are not entitled to fly Indian flag but

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- (b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it .

- (4) On the completion of the inquiry, if the Lokpal is satisfied that there is prima facie evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned.

25 No. 31 of 2014.

operating under the authority of India, shall comply with the requirements set forth in this part, including the applicable standards and requirements as prescribed from time to time as well as effective measures to ensure that such ships comply with the requirements, as may be prescribed from time to time. Further section 356 S mandates issuance of international anti-fouling system certificate. Further it has provisions that state the issue of anti-fouling system certificate for foreign ships in India and Indian ships in foreign countries. Further, it also deals with the control of waste materials and record of anti-fouling systems. Section 356W (1) states that any person authorised by the director-general as surveyor at any reasonable time does inspection and control of all ships above 400 gross tonnage.²⁶ Section 356 X states that if on information regarding contravention of the provisions of Convention is received, the director-general or any officer authorised by him in this behalf, may (a) detain the ship until the causes of such contravention are removed to the satisfaction of the director-general or the officer authorised by him; and (b) levy penalty on such ship.

The Merchant Shipping (Second Amendment) Act, 2014

Under this, the amendments are mainly on application of maritime labour standards to seafarers and ships. Further the amendment mandates that there should be prohibition of engagement of underage persons (under the age of sixteen years) in certain cases. It also has provisions that states that the Central Government may make rules for the purposes of respecting employment of young persons. The Act also mandates that ships need to possess maritime labour certificate and declaration of maritime labour compliance. The new section 218A deals with the power to make rules for purposes of Maritime Labour Convention, 2006.

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

To protect the rights of urban street vendors and to regulate street vending activities the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014²⁷ is enacted. Part I is the definition part. Part II deals with the regulation of street vendors. Section 3 provides for the survey of street vendors

26 S. 356W (1) Any person authorised by the Director-General as Surveyor in this behalf may inspect, at any reasonable time, any ship to which any of the provisions of this Part applies, for the purposes of—

- (a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;
- (b) verifying that, where required, there is on-board a valid International Anti-Fouling System Certificate or a declaration on anti-fouling system; or
- (c) brief sampling of the ship's anti-fouling system that does not affect the integrity, structure, or operation of the anti-fouling system taking into account the procedures as prescribed from time to time; and
- (d) verifying any record required to be maintained on-board.

27 No. 7 of 2014.

and protection from eviction or relocation. It states that the town vending committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones. Section 4 states that after the survey the identified street vendor who has completed the age of fourteen years shall be provided with a certificate of vending by the town vending committee, subject to such terms and conditions as provided in the Act. Further, the categories of certificate of vending are provided and issue of identity cards, the criteria, vending fees, validity and renewal of certificate of vending, cancellation or suspension of certificate of vending *etc.* are also provided.

The rights and obligations of street vendors along with the relocation and eviction of street vendors are explicitly provided. The Act also with right of street vendor for a new site or area on relocation, duty of street vendors, maintenance of cleanliness and public hygiene, maintenance of civic amenities in vending zone in good condition *etc.* Chapter IV is on relocation and eviction of street vendors and chapter V is on dispute redressal mechanism wherein it is stated that there will be a redressal of grievances or resolution of disputes of street vendors.²⁸ Any person who is aggrieved by the decision of the committee may prefer an appeal to the local authority in such form, within such time and in such manner as may be prescribed.

28 S. 20 states as follows:

- 20 (1) The appropriate Government may constitute one or more committees consisting of a Chairperson who has been a civil judge or a judicial magistrate and two other professionals having such experience as may be prescribed for the purpose of deciding the applications received under sub-section (2): Provided that no employee of the appropriate Government or the local authority shall be appointed as members of the committee.
- (2) Every street vendor who has a grievance or dispute may make an application in writing to the committee constituted under sub-section (1) in such form and manner as may be prescribed.
- (3) On receipt of grievance or dispute under sub-section (2), the committee referred to in sub-section (1) shall, after verification and enquiry in such manner, as may be prescribed, take steps for redressal of such grievance or resolution of such dispute, within such time and in such manner as may be prescribed.
- (4) Any person who is aggrieved by the decision of the committee may prefer an appeal to the local authority in such form, within such time and in such manner as may be prescribed.
- (5) The local authority shall dispose of the appeal received under sub-section (4) within such time and in such manner as may be prescribed: Provided that the local authority shall, before disposing of the appeal, give an opportunity of being heard to the aggrieved person.

Chapter VIII is on prevention of harassment of street vendors by police and other authorities and chapter IX deals with the penal provisions, *i.e.*, penalty for contraventions. Provisions for promotional measures, research, training and awareness, powers to delegate, power to amend schedules, power to make rules, power to make bye-laws *etc.* are also given. The Act has two schedules also: The first one is on plan for street vending and the second one is on the appropriate government's way of doing surveys.

The Apprentices (Amendment) Act, 2014

This Act²⁹ amends the Apprentices Act, 1961. The important amendments include definitions of designated trade,³⁰ industry,³¹ optional trade,³² trade apprentice,³³ worker *etc.*³⁴ under section 2. Section 4 (4) states that every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the apprenticeship adviser until a portal-site is developed by the central government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration. The Act further inserted the new sections 5A and 5B that deal with the regulation of optional trade and engagement of apprentices from other states respectively. The Act mandates that the Central Government shall prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Section 9 prescribes that every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.³⁵ Another important amendment is of section 15 which states that the

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30 designated trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act;

31 Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both.

32 Optional trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act.

33 trade apprentice means an apprentice who undergoes apprenticeship training in any designated trade

34 Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer

35 The sub-section (3) of s.9 states that such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central

weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed. Further, an apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training. Section 21 reads as every trade apprentice who has completed the period of training may appear for a test to be conducted by the national council or any other agency authorised by the central government to determine his proficiency in the designated trade in which he has undergone apprenticeship training. Further, section 22 states that every employer should formulate its own policy for recruiting any apprentice who had completed the period of apprenticeship training in his establishment. Section 30 provides if any employer contravenes the provisions of this Act relating to the number of apprentices which he is required to engage under those provisions he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate government, for explaining the reasons for such contravention. Further, it is also states that in case the employer fails to reply the notice within the period specified under sub-section (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.

The Indian Institutes of Information Technology Act, 2014

The Indian Institutes of Information Technology Act, 2014³⁶ declares certain institutions of information technology to be 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 and to provide for certain other matters connected with such institutions or incidental thereto.

The Act deals with the incorporation of institutes, effect of incorporation of institutes, objects of institute, powers and functions of institute *etc.* The Act mandates that institute to be deemed as distinct legal entity not-for-profit. Section 12 states that the following shall be the authorities of an institute, namely:—

- (a) board of governors;
- (b) senate;
- (c) finance committee;

Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.

36 No. 30 of 2014.

(d) building and works committee;

(e) research council;

(f) such other authorities as may be declared by the statutes to be the authorities of the institute.

The Act further provides for the board of governors, term of office of, vacancies among, and allowances payable to, members of board, powers and functions of board of governors *etc.* Further, the Act deals with the senate, its powers and functions *etc.* Likewise, section 18 deals with finance committee, its powers and functions, further the details of building and works committee, its powers and functions, forming research council, its meetings *etc.*

The Act also has provisions providing for the appointment, powers and functions of registrar, other authorities and officers, provisions relating to the review of performance of institute *etc.* Chapter IV categorically deals with the grants by central government and the fund of institute. The Act also has provisions dealing with the council of institutes, term of office and allowances payable to members of council, functions and duties of council.

The Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014

The Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014³⁷ amends the Sick Textile Undertakings (Nationalisation) Act, 1974 and the Textile Undertakings (Nationalisation) Act, 1995 in order to continue with the leasehold rights vested in the National Textile Corporation on completion of the lease-hold tenure. By this amendment, the National Textile Corporation subserves the interests of the general public and the land continue to be in possession of the said Corporation; and whereas various other textile undertakings have been nationalised from time to time and their assets vested absolutely in the Central Government and thereafter transferred to the National Textile Corporation Limited by the Central Government free from all encumbrances. Further, after the nationalisation of the textile undertakings, a large sum of money have been invested with a view to making the said textile undertakings viable. The Central Government has taken initiative to revive certain sick undertakings including the National Textile Corporation under a revival scheme sanctioned by the board for industrial and financial reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985. Further, it is necessary for the proper and effective implementation of the revival scheme and to protect the public investment in the acquired textile undertakings and to explicitly clarify the status of such vesting of the lease-hold rights in the Central Government.

37 No. 36 of 2014.

VII LABOUR

The Labour Laws (Exemption from furnishing returns and maintaining registers by certain Establishments) Amendment Act, 2014

This Act³⁸ amends the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988. The important amendment is the substitution of new section for section 4 which exempts from furnishing or maintaining of returns and registers required under certain labour laws.

VIII JUDICIARY

The National Judicial Appointments Commission Act, 2014

The National Judicial Appointments Commission Act, 2014³⁹ is held to be unconstitutional in *Supreme Court Advocates-on-Record Association v. Union of India*,⁴⁰ however, the details of the Act is examined purely for academic deliberations. The Act proposed to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other judges of the Supreme Court and chief justices and other judges of high courts and for their transfers and for matters connected therewith or incidental thereto. That Act categorically states that the Central Government shall, within a period of 30 days from the date of coming into force of this Act, intimate the vacancies existing in the posts of judges in the Supreme Court and in a high court to the commission for making its recommendations to fill up such vacancies.

Further, the Central Government shall, within a period of 30 days from the date of occurrence of any vacancy by reason of death or resignation of a judge of the Supreme Court or of a high court, make a reference to the commission for making its recommendations to fill up such vacancy. The section 5⁴¹ deals with the

38 No. 33 of 2014.

39 No. 40 of 2014.

40 *Supra* note 1.

41 The Commission shall recommend for appointment the senior-most Judge of the Supreme Court as the Chief Justice of India if he is considered fit to hold the office: Provided that a member of the Commission whose name is being considered for recommendation shall not participate in the meeting. (2) The Commission shall, on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, recommend the name for appointment as a Judge of the Supreme Court from amongst persons who are eligible to be appointed as such under clause (3) of article 124 of the Constitution: Provided that while making recommendation for appointment of a High Court Judge, apart from seniority, the ability and merit of such Judge shall be considered: Provided further that the Commission shall not recommend a person for appointment if any two members of the Commission do not agree for such recommendation. (3) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Judge of the Supreme Court as it may consider necessary.

procedure for selection of judge of Supreme Court and section 6 deals with the procedure for selection of judges of high court.⁴² Section 7 deals with the power of President to require reconsideration. Under section 9, commission shall recommend for transfer of chief justices and other judges of high courts from one high court to any other high court. The following sections also deal with the procedure to be followed by commission in discharge of its functions, power to make rules, regulations *etc.* Section 13 mandates that rules and regulations are to be laid before Parliament. Likewise, section 14 states that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the commission, by an order published in the official gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

IX MISCELLANEOUS

The Governors (Emoluments, Allowances and Privileges) Amendment Act, 2014

The Act⁴³ received the assent of the President on the 4th March, 2014. This Act is enacted to amend the Governors (Emoluments, Allowances and Privileges) Act, 1982. This inserted new section 12A to deal with the entitlement of ex-governor to secretarial assistance.⁴⁴

42 S. 6 (1) The Commission shall recommend for appointment a Judge of a High Court to be the Chief Justice of a High Court on the basis of *inter se* seniority of High Court Judges and ability, merit and any other criteria of suitability as may be specified by regulations. (2) The Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending for appointment a person to be a Judge of that High Court. (3) The Commission shall also on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, nominate name for appointment as a Judge of a High Court from amongst persons who are eligible to be appointed as such under clause (2) of article 217 of the Constitution and forward such names to the Chief Justice of the concerned High Court for its views. (4) Before making any nomination under sub-section (2) or giving its views under sub-section (3), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified by regulations. (5) After receiving views and nomination under sub-sections (2) and (3), the Commission may recommend for appointment the person who is found suitable on the basis of ability, merit and any other criteria of suitability as may be specified by regulations. (6) The Commission shall not recommend a person for appointment under this section if any two members of the Commission do not agree for such recommendation. (7) The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations. (8) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary.

43 No. 8 of 2014.

44 S.12A: Subject to any rules made in this behalf, the ex-Governor shall, for the remainder of his life, be entitled to secretarial assistance of one Personal Assistant

The Delhi Special Police Establishment (Amendment) Act, 2014

The Delhi Special Police Establishment (Amendment) Act, 2014⁴⁵ amends section 4A wherein it stated that the leader of opposition recognised as such in the House of the People or where there is no such leader of opposition, then, the leader of the single largest opposition party in that House. Further, in the same section clause 2 is amended that no appointment of a director shall be invalid merely by reason of any vacancy or absence of a member in the committee.

The Constitution (Scheduled Castes) Orders (Amendment) Act, 2014

The Constitution (Scheduled Castes) Orders (Amendment) Act, 2014⁴⁶ of Parliament received the assent of the President on December 17, 2014. This amends the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Sikkim) Scheduled Castes Order, 1978.

X CONCLUSION

During the first session in 2014 itself the Parliament discussed the union and railway budgets and passed several laws including Bills establishing the National Judicial Appointments Commission. In winter session II (February 17-20, 2014) Lok Sabha has passed a total of 175 Bills. Lok Sabha also spent time discussing issues related to the monsoon, inflation, spread of encephalitis, atrocities against women and children and communal violence. Survey shows that Lok Sabha spent 12% of its time discussing legislation.⁴⁷ However, study reports also show that Lok Sabha has lost 88% of scheduled time to disruptions, while the Rajya Sabha has lost 85% of scheduled time to disruptions.⁴⁸ The highlights of the parliament's legislative function for the survey year are the Lokpal and Lokayuktas Act, 2013; the Andhra Pradesh Reorganisation Act, 2014 and the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014. The most remarkable legislation was the National Judicial Appointments Commission Act, 2014 though the same was later held to be unconstitutional.

on reimbursement basis: Provided that where such ex-Governor is re-appointed to the office of the Governor or elected to Parliament or the State Legislature or appointed to any office of profit under the Union or a State Government, he shall not be entitled for such secretarial assistance for the period during which he holds such office.

45 No. 28 of 2014.

46 No. 34 of 2014.

47 Available at: http://www.prsindia.org/administrator/uploads/general/1408010499_Vital%20Stats%20Budget%202014.pdf

48 Available at: <http://www.prsindia.org/media/media-updates/-prs-parliament-diary-winter-session-ii-february-17-20-2014-3142/>