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ANNEXURE

The Law Reform (Miscellaneous Provisions Amendment) Bill, 2002

A

Bill

to amend certain central enactments

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows, namely:-

Short title and commencement

1. (1) This Act may be called The Law Reform (Miscellaneous Provisions Amendment) Act, 2002.

(2) It shall come into force on such date the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for the different provisions of this Act.

Amendment of Indian Penal Code(45 of 1860)

2. In the Indian Penal Code, after section 424, the following sections shall be inserted, namely:-

Of Offences Relating to Certain Transactions Involving Immovable Property

Failure to inform transferee of immovable property regarding prior transaction

“424A. Whoever, having entered into any prior transaction or having created any prior encumbrance in relation to immovable property or having knowledge of the existence of such prior transaction or encumbrance, enters into a subsequent transaction or creates a subsequent encumbrance in favour of another person in relation to or affecting the whole or any part of such property and -

(a) knowingly fails to bring the existence of such prior transaction or prior encumbrance to the notice of such other person; or

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- (b) knowingly fails to include a recital in regard to the existence of such prior transaction or prior encumbrance in any subsequent instrument executed in relation to the whole or part of such property with such other person,

shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine.

Explanation:- sale, agreement of sale, exchange, mortgage, lease, charge, or right to possession in relation to land or land with buildings or flats already in existence or buildings or flats proposed to be constructed shall be a “transaction” or “encumbrance” within the meaning of this section.

Failure to inform transferee of immoveable property about pendency of litigation

424B. Whoever knowingly executes any instrument-

- (a) which is or purports to be a transfer of immovable property or any interest therein; or

- (b) which is or purports to be an agreement to transfer any immovable property or any interest therein; or

- (c) which creates or purports to create a charge over immovable property, and

- (i) fails to refer to the pendency of any suit or proceeding, in which any right to such property is in question, in the said instrument; and

- (ii) executes such instrument without the authority of the court in which any suit or proceeding in relation to or affecting the whole or any part of such property is pending,

shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine.”

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Amendment of the Negotiable Instruments Act, 1881 (26 of 1881)

3. In the Negotiable Instruments Act, 1881, in section 79, for the words “such date after the institution of a suit”, the words “not later than the institution of a suit” shall be substituted.

Amendment of section 58 of the Transfer of Property Act, 1882 (4 of 1882)

4. In section 58 of the Transfer of Property Act, 1882, in clause (c) after the proviso the following proviso shall be inserted, namely:-

“Provided further that where the condition is embodied in a document other than the one which effects or purports to effect the sale, the concession granted in favour of the seller by the purchaser for obtaining a re-conveyance of the property, shall be deemed to have not lapsed on account of non performance of the condition by the date stipulated, and if the seller pays to the buyer or deposits in a court, the consideration referred to in the sale-deed within three years of the date stipulated in the condition, together with interest at twelve percent. computed from the said date up to the date of payment or deposit, as the case may be, he shall be entitled to re-conveyance of the property.”

Amendment of Revenue Recovery Act, 1890 (1 of 1890)

5. In the Revenue Recovery Act 1890,

(a) in section 6, after sub-section (6), the following sub-sections shall be inserted, namely :-

“(7): The sale proclamation shall specify, as fairly and accurately as possible –

- (a) the property to be sold;
- (b) the revenue or tax levied by any local authority upon the property or any part thereof;
- (c) the amount for the recovery of which the sale is ordered;

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- (d) the reserve price below which the property may not be sold;
and
- (e) any other fact which the Collector considers it material for a purchaser to know, in order to judge the nature and value of the property:

Provided that where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Collector, otherwise be given.

- (8) No sale of immovable property shall, without the consent in writing of the defaulter, take place until after the expiration of at least 30 days calculated from the date on which proclamation is made under sub-section (5):

Provided that if the sale is adjourned for want of bidders or for any other reason for a period longer than 30 days, a fresh proclamation of sale shall be issued as specified in this section unless the defaulter consents to waive it.

- (9) The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Collector:

Provided that no bid under this section shall be accepted if the amount bid by the highest bidder is less than the reserve price specified in clause (d) of sub-section (7).”

(b) after section 6, the following section shall be inserted, namely :-

Government, local authority etc to bid at reserve price in certain cases

“6A. Notwithstanding anything in section 6, where the sale of immovable property for which a reserve price has been fixed under clause (d) of sub-section (7) of section 6, has been postponed on two occasions for want of a bid or the bid being below the reserve price, it shall be lawful for the Collector to permit the concerned Government, public authority, public officer or local authority, to which the monies are due from the defaulter, to offer a bid for the property at any subsequent sale, at the reserve price afore mentioned.”

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Amendment of section 35 of the Indian Stamp Act, 1899 (2 of 1899)

6. In the Indian Stamp Act, 1899, in section 35, in the proviso, in clause(a), for the words “any such instrument not being an instrument chargeable with a duty not exceeding ten naya paise only, or a bill of exchange or promissory note, shall subject to all just exceptions be admitted in evidence”, the words “any such instrument shall be admitted in evidence”, shall be substituted.

Amendment of the Civil Procedure Code, 1908 (5 of 1908)

7. In the Code of Civil Procedure 1908-

(a) for section 34 , the following section shall be substituted, namely:-

Interest

“34.(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree order interest to be paid on the principal sum adjudged, from the date of the suit to the date of decree at a rate not exceeding twelve percent. per annum, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding twelve percent. per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment or to such earlier date as the Court deems fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed twelve percent., per annum, but shall not exceed the contract rate of interest or where there is no contractual rate, the rate at which monies are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation.- I In this sub-section, “nationalized bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

Explanation.- II A transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

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(2) Where a judgment and decree are silent with respect to the payment of interest on such principal sum from the date of the decree to the date of payment or other earlier date, the decree holder may apply to the Court which passed the decree for an order in relation to the liability of the judgment debtor to pay interest for the said period and as to the rate at which interest is payable for the said period and the Court shall pass a reasoned order on the said application and in case interest is awarded, the Court shall amend the judgment and decree in accordance with the said order.

(3) The application referred to in sub-section (2) shall be filed within a period of 30 days of the date of judgment and decree in the suit and while computing the period for filing an appeal against the judgment and decree under the provision of Limitation Act, 1963, the period between the date of the application referred to in sub-section (2) and the date of passing of the order thereon, shall also be excluded, irrespective of whether any interest was awarded or not in such application.”

(b) in the First Schedule-

(A) in Order 20-

(i) for rule 12, the following rule shall be substituted, namely :-

Decree for possession and mesne profits

“12. (1) Where a suit is for recovery of possession of immovable property and for rents or mesne profits, the parties shall, in addition to adducing evidence in the Court of first instance, as to their right to possession, adduce evidence also in regard to the rents or mesne profits for the period prior to the institution of the suit (if any claimed), up to the date of commencement of trial and the said Court shall, irrespective of whether a decree for possession is passed or not, record findings as to the rent or mesne profits that may be payable to the plaintiff for the aforesaid period, in the event of a decree for possession being passed..

(2) The Court may pass a decree –

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- (a) for possession of the property;
- (b) for the rents or mesne profits which have accrued on the property during the period prior to the institution of the suit up to the date of commencement of trial;
- (c) directing an inquiry into the rents or mesne profits from the date of commencement of trial until,
 - (i) the delivery of possession to the decree holder; or
 - (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the Court or
 - (iii) the expiration of three years from the date of the decree whichever event first occurs.

(3) Where an inquiry is directed under clause (c) of sub-rule (2), a final decree in respect of the rents or mesne profits, shall be passed in accordance with the result of such inquiry.

(4) Where an appellate Court orders an inquiry as stated in clause (c) of sub rule (2), it may direct the Court of first instance to make the inquiry and in every case, the Court of first instance may, of its own accord and shall, whenever moved to do so by the decree holder, inquire and pass a final decree.

(5) A decree may be partly preliminary and partly final and there may be more than one preliminary decree and more than one final decree.”

(ii) in rule 18, for clause (2) the following clause shall be substituted, namely:-

“(2)(a) If and so far as such decree relates to any movable or immovable property, the parties shall, in addition to adducing evidence in the Court of first instance as to their right to partition, adduce evidence also in regard to the income for the period prior to the institution of the suit (if any claimed), up to the date of commencement of trial and the said Court shall, irrespective of whether a preliminary decree for partition is passed or not, record findings as to the share of income that may be payable to the plaintiff or other parties for the aforesaid period, in the event of a preliminary decree for partition being passed.

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(b) The Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required for partition of the property by metes and bounds and direct that an inquiry into the income from the property from the date of commencement of the trial shall be made.

(c) Where inquiry is directed under sub-clause (b), parties may adduce evidence in regard to the division of the property by metes and bounds and also in regard to the income from the property for the period from the date of commencement of the trial and the Court shall pass a final decree in regard to the partition of the property by metes and bounds and the allotment thereof and also in regard to the share of the income to which each of the parties is entitled for the period prior to institution of the suit and for the period during the pendency of the proceedings, up to and until the date of delivery of the property.

(d) Where a preliminary decree for partition is passed by an appellate Court and an inquiry is directed to be made under sub-clause (b), the said Court may direct the Court of first instance to make the inquiry and in every case, the Court of first instance may of its own accord and shall, whenever moved to do so by any of the parties, inquire and pass a final decree.

(e) A decree may be partly preliminary and partly final and there may be more than one preliminary decree and more than one final decree.”

(B) for Order XXXIV , the following Order shall be substituted, namely:-

“ORDER XXXIV- SUITS RELATING TO MORTGAGES OF
IMMOVABLE PROPERTY

1. Parties to suits for foreclosure, sale and redemption – Subject to the provisions of this Code, all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation:- A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

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2. Decree in foreclosure suits.- (1) In a suit for foreclosure, if the plaintiff succeeds, the court shall pass a decree –

- (a) declaring the amount due to the plaintiff on the date of such decree for
 - (i) principal and interest on the mortgage;
 - (ii) the costs of the suit, if any, awarded to him; and
 - (iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; and

(b) directing that,-

(i) if the defendant pays into Court the amount so declared due with future interest and subsequent costs as are mentioned in rule 7 on a day within six months from the date of the decree to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such persons as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at the cost of the defendant free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) if such payment is not made on or before the day fixed by the Court, the defendant and all persons claiming through or under him shall be debarred from all rights to redeem the property; and also if necessary the defendant shall put the plaintiff in possession of the property.

(2) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the right of, any such mortgagees are joined as parties, the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10 as the case may be, of Appendix D with such variations as the circumstances of the case may require.

(3) On the expiry of the date fixed for payment of the amount declared due to the mortgagee, all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

3. Decree in suit for sale.- (i) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clause (a) and sub-clause (i) of clause (b) of sub-rule (1) of rule 2 and also directing that, in default of the defendant paying as therein mentioned, the mortgaged

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property or a sufficient part thereof be sold, and that the proceeds of the sale (after deducting the there from the expenses of the sale) be applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same; and that, in case the proceeds of such sale be insufficient to pay the amount due to the plaintiff, the balance, if legally recoverable from the defendant otherwise than out of the property sold be paid by the defendant personally.

(ii) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is an anomalous mortgage, the Court may, at the instance of the plaintiff or of any other person interested either in the mortgage money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(iii) Where in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the Court shall adjudicate upon the respective rights and liabilities of all the parties to the suit in the manner and form set forth in Form No. 9, Form No.10 or Form No. 11, as the case may be, of Appendix D, with such variations as the circumstances of the case may require.

4. **Decree in redemption suit.** - In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree

(a) declaring the amount due to the defendant at the date of such decree for

- (i) principal and interest on the mortgage;
- (ii) the cost of the suit, if any, awarded to him;
- (iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage – security, together with interest thereon: and

(b) directing that,

(i) if the plaintiff pays into Court the amount so declared due with subsequent interest and costs as are mentioned in Rule 7, on a day within six months of the decree to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall if so required, re-transfer the property to the plaintiff at his costs, free from the mortgage and from all

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encumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property; and

- (ii) if such payment is not made on or before the date so fixed, the plaintiff shall in the case of a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, be debarred from all rights to redeem the property and also, if necessary, put the defendant in possession of the mortgaged property; and that if desired by the defendant in the suit itself, in the case of any mortgage other than a usufructuary mortgage, a mortgage by conditional sale or such an anomalous mortgage as aforesaid the mortgaged property or a sufficient portion thereof be sold and the proceeds of the sale (after deducting there from the expenses of the sale) be applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same and that, in case the net proceeds of such sale be insufficient to pay the amount due to the defendant, the balance be paid by the plaintiff personally if the balance is legally recoverable from the plaintiff otherwise than out of the property sold.

5. **Date of payment** - The Court may, upon good cause shown and upon such terms, if any, as it thinks fit, postpone the date fixed for payment under this Order from time to time.

6. **Decree where nothing is found due or where mortgagee has been overpaid** - Notwithstanding anything hereinbefore contained if it appears in a redemption suit nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant if so required, to retransfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

7. **Costs of mortgagee subsequent to decree** .- In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage money such costs of the suit and other costs, charges and expenses, as have been properly incurred by him since the decree for foreclosure, sale or redemption up to the time of actual payment.

8. **Sale of property subject to prior mortgage**.- Where any property the sale of which is directed under this Order is subject to a prior mortgage the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

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9. **Application of proceeds.-** (i) Such proceeds shall be brought into Court and applied as follows:-

First, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

Secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and costs, properly incurred in connection therewith;

Thirdly, in payment of all interest due on account of the mortgage in consequence where of the sale was directed, and of the suit in which the decree directing the sale was made;

Fourthly, in payment of the principal money due on account of the mortgage; and

Lastly, the residue, if any, shall be paid to the persons proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(ii) nothing in this rule or in rule 8 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

10. Suit for sale necessary for bringing mortgaged property to sale.- Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, Rule 2.

11. Mortgage by the deposit of title deeds and charges.- All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be apply to a mortgage by deposit of title deeds within the meaning of section 58 and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882.”

(C) in Order XXXVIII, for rules 5 and 6 the following rules shall be substituted, namely:-

Attachment Before Judgment

“ **5. Where defendant may be called upon to furnish security for production of property.** – (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him -

(a) is about to dispose of the whole or any part of his property, or

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- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order or to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) Where the defendant fails to show cause or, as the case may be, fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(4) Where the defendant shows such cause or furnishes the required security and the properties specified or any portion of it have been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

(5) If an order of attachment is made without complying with the provisions of sub rule (1) of this rule, such attachment shall be void.

Interim attachment before judgment

6. (1) Where the court is satisfied, at any stage of a suit, by affidavit or otherwise that the conditions referred to in sub-clauses (a) or (b) of sub-rule (1) of rule 5 are satisfied and that there is likelihood of the property or part thereof being immediately disposed of or removed from the local limits of the jurisdiction of the court in case the procedure under sub rule (1) of rule 5 is to be followed, the court may, for brief reasons to be recorded, pass an order of interim attachment without following the said procedure and shall simultaneously issue a notice to the defendant, to show cause why the order of interim attachment should be withdrawn altogether or upon furnishing security.

(2) Where the defendant shows cause or furnishes the required security within time fixed by the Court, the Court shall direct that the order of interim attachment shall stand withdrawn or make such other order as it may think fit.

(3) Where the defendant fails to show cause or fails to furnish the security within the time fixed by the court, the court may confirm the interim attachment of the

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property specified or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit.

(4) The order of interim attachment shall not be deemed to be void on the ground that no prior notice to show cause as contemplated by sub rule (1) of rule 5 has been issued before it was passed.”

(D) in Appendix F, for Form No.5, the following Forms shall be substituted, namely:-

“No. 5

ATTACHMENT BEFORE JUDGMENT AFTER PRIOR NOTICE CALLING FOR
SECURITY FOR FULFILLMENT OF DECREE

(Order XXXVIII r.5)

To

The Bailiff of the Court,

Whereashas proved to the satisfaction of the Court that the defendant in the above suit.....;

These are to command you to call upon the said defendant on or before the....day of.....200 , either to furnish security for the sum of Rs..... or to produce and place at the disposal of this court when required.....or the value thereof, or such portion of the value as may be sufficient to satisfy the decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further commanded to return this warrant on or before theday of200...with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed;

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Given under my hand and seal of the Court this.....day of200....

..... Judge”

No. 5A

**INTERIM ATTACHMENT BEFORE JUDGMENT WITH NOTICE TO
FURNISH SECURITY OR TO PRODUCE PROPERTY**

(Order XXXVIII, r. 6)

“To

The Defendant

Whereas has proved to the satisfaction of the Court that the defendant in
the above suit

You are hereby commanded, by way of interim attachment, until further orders of
the Court, to produce and handover the following movable property referred to in the
Schedule hereto annexed to the Bailiff to enable him to keep the property under safe and
secure custody

[and/or

You are hereby prohibited and restrained, by way of interim attachment until
further orders of the Court, from transferring or charging the immovable property
referred to in the Schedule hereto annexed, by sale, gift or otherwise and that all persons
be, and that they are prohibited and restrained from receiving the same by purchase, gift
or otherwise,]

And you may show cause on or before day of 200. why this interim order of
attachment should be withdrawn altogether or upon furnishing security with a sum of
Rs.....

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Given under my hand and seal of the Court, this Day of 200..

Judge”

Amendment of Registration Act, 1908 (16 of 1908)

8. In the Registration Act 1908,

(a) after section 84, the following section shall be inserted, namely :-

Punishment for failure to register notice under section 89A

“84A. Any person who fails to file a notice under section 89B before the registering officer within the period specified in that section shall be punished with imprisonment for a term which shall not be less than one year but which may extend up to three years and shall also liable to fine.”

(b) after section 89, the following sections shall be inserted, namely:-

Copies of Court decrees, attachment orders, written demands under Revenue Recovery Act to be sent to Registering Offices and filed in registers:

“89A (1) Every Court passing –

(a) any decree or order creating, declaring, transferring, limiting or extinguishing any right, title or interest to or in immovable property in favour of any person, or

(b) an order for interim attachment or attachment of immovable property or for the release of any immovable property from such attachment,

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shall, in accordance with the rules made in this behalf, send a copy of such decree or order together with a memorandum describing the property as far as may be practicable, in the manner required by section 21, to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such decree or order is situate, and such officer shall file the copy of the memorandum in his Book No. 1:

Provided that where the immovable property is situate within the local limits of the jurisdiction of more than one registering officer, the procedure indicated in this clause shall be followed in respect of the property within the jurisdiction of each of such officers .

(2) Every officer issuing a written demand before the attachment of the immovable of a defaulter under the provisions of any law relating to Revenue Recovery for the time being in force, including the Revenue Recovery Act, 1890, shall -

(a) send a copy of such written demand together with a memorandum describing the property, as far as may be practicable, in accordance with the provisions of section 21;

(b) where such written demand is withdrawn or attachment of property is lifted or the property sold and sale is confirmed, send a memorandum indicating that fact and describing that property, as far as may be practicable, in accordance with the provisions of section 21,

to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property which the written demand relates is situate and such registering officer shall file a copy of the written demand and the memorandum in his Book No.1:

Provided that where the immovable property is situate within the local limits of the jurisdiction of more than one registering officer, the procedure specified in clauses (a) and (b) shall be followed in respect of the property within the jurisdiction of each of such officers.

Notice to be sent to registering officers by mortgagor after creation of mortgage by depositing title deeds and provision for compensation in favour of subsequent transferee

89B. (1) Every person who has mortgaged immovable property by way of a mortgage by depositing title deeds under clause (f) of section 58 of the Transfer of Property Act, 1882 shall within thirty days from the date of the mortgage, file in accordance with the rules made in this behalf, a notice of intimation of his having so mortgaged the property, giving details of his name and address, name and address of the mortgagee, date of

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mortgage, amount received under the mortgage, rate of interest payable, list of documents deposited, and description of the immovable property as detailed in section 21, before the registering officer within the limits of whose jurisdiction the whole or any part of the property is situated and the said officer shall file the same in his Book I:

Provided that if the property so mortgaged falls within the jurisdiction of more than one registering officer, the procedure specified in this sub-section shall be followed in respect of the property within the jurisdiction of each of such officers.

(2) If the person who has mortgaged the property as aforesaid fails to file a notice within thirty days as stated in sub-section (1) before the registering officer or officers, as the case may be, and enters into any transaction in relation to or affecting the immovable property which is the subject matter of the mortgage, with a third party; such a transaction shall be void and the third party shall be entitled to refund of any amount paid by him together with interest at twelve percent from the date of payment and also to compensation for any damages suffered by him, from his transferor.

(3) The amount recoverable by such transferee as specified in sub-section (3) shall be a charge on the interest of the mortgagor, in the mortgaged property.

Power to make rules for filing of true copies of documents and notices referred to section 89A and 89B

“89C. (1) The State Government may by notification in the Official Gazette, make rules for all purposes connected with the filing copies of documents or notices referred to section 89A and 89B, in the appropriate book under this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for –

(a) the manner in which notices or true copies of documents shall be prepared; and

(b) the manner of filing the notices or true copies.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses or where such Legislature consists of one House, before that House.”

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Amendment of the Indian Succession Act, 1925 (39 of 1925)

9. In the Indian Succession Act, 1925, in section 306,

(a) the words “assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party” shall be omitted;

(b) illustration (i) shall be omitted.

Amendment of section 69 of the Indian Partnership Act, 1932 (9 of 1932)

10. In the Indian Partnership Act 1932, in section 69, the following Explanation shall be inserted at the end:-

“Explanation.- For the purposes of this section, the words ‘a right arising from a contract’ shall mean a right arising from a contract made in the course of business.”

Amendment of the Hindu Marriage Act, 1955 (25 of 1955)

11. In the Hindu Marriage Act, 1955, in section 19 after clause (iii), the following clause shall be inserted, namely:

“(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition.”

Amendment of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956)

12. In the Hindu Adoptions and Maintenance Act 1956, in section 18, in sub-section (2),

(i) for clause (d) the following clause shall be substituted , namely:-

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“(d) if he has any other wife living, whether the marriage of the other wife had been solemnized before or after the commencement of the Hindu Marriage Act, 1955.”

(ii) after clause (g), the following Explanations shall be inserted at the end, namely:

“Explanation.-1 A woman who marries a person without knowing that he is already married and that his wife is living shall, without prejudice to claim maintenance on the ground mentioned in clause (d) , be entitled to live separately from her husband.

Explanation.-2 A woman who marries a person knowing that he is already married and that his wife is living, shall be entitled to live separately from her husband without forfeiting her claim to maintenance on any of the grounds mentioned in clauses (a), (b), (c), (e), (f) and (g).”

Amendment of the Code of Criminal Procedure 1973 (2 of 1974)

13. In the Code of Criminal Procedure Code 1973,-

(1) in section 125, in sub-section (1),in the Explanation, in sub-clause (i) of clause (b), after the words “and has not remarried” the following shall be inserted, namely:-

“or whose marriage is void, under section 11 read with sub-section(1) of section 5 of the Hindu Marriage Act, 1955 or under clause (a) of section 4 read with section 24 of the Special Marriage Act, 1954 or under section 4 of the Parsi Marriage Act, 1936, or under any other provision contained in any enactment corresponding to the aforesaid provisions as may be notified by the Central Government in this behalf, and has not remarried.”

(2) in section 162, for sub-section (1) the following sub-sections shall be substituted, namely:

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“ (1) The statement made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it if the person who has given the statement is literate and in case the person is not literate, his thumb impression shall be obtained and in every case, a true copy of the statement shall be furnished to the person who gave the statement, immediately under acknowledgement.

(1A) Every such statement recorded under section 161 shall contain the date and time as to when the statement was recorded and the place where it was recorded, and shall be forthwith forwarded to the Magistrate.

(1B) Any such statement or record thereof or any part of such statement or record whether in a police diary or otherwise, shall not be used for any purpose, save as hereafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made,

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose of explaining any matter referred to in his cross-examination.”

(3) after section 164 ,the following section shall be inserted, namely:-

Evidence of material witnesses to be recorded by Magistrates in certain cases

“ **164A** (1) Any police officer making an investigation into any offence punishable with imprisonment for a period of ten years or more (with or without fine) including an offence which is punishable with death, shall in the course of such investigation, forward all persons whose evidence is essential for the just decision of the case, to the nearest Magistrate for recording their statements.

(2) The Magistrate shall record the statements of such persons forwarded to him under sub-section (1) on oath and shall keep such statements with him awaiting further police report under section 173.

(3) Copies of such statements shall be furnished to the investigating officer.

(4) If the Magistrate recording the statement is not empowered to take cognizance of such offence, he shall send the statements so recorded to the magistrate empowered to take cognizance of the case.

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- (5) The statement of any person duly recorded as a witness under sub-section (1) may, if such witness is produced and examined, in the discretion of the court and subject to the provisions of the Indian Evidence Act, 1872, be treated as evidence.”
- (4) in section 174, after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) The statements of the persons at the inquest shall be recorded in accordance with the provisions of sub-sections(1) and (1A) of section 162 and shall be forthwith forwarded to the Magistrate and the provisions of sub-section (1B) of section 162 shall as far as may be apply to such statements.”

- (5) in section 190, in sub-section (1), in clause (b), after the words “such facts” the words “ or upon a complaint of facts which constitute such offence made by a public servant acting or purporting to act in discharge of his official duties;” shall be inserted.

- (6) after section 207, the following section shall be inserted, namely :-

Supply to the accused copy of complaint made by a public servant

“207A. In any case, where the proceeding has been instituted on a complaint made by a public servant acting or purporting to act in the discharge of his official duties, the Magistrate shall without delay furnish to accused, free of cost, a copy of the complaint and documents on which it is based and other documents referred to therein:

Provided that if the Magistrate is satisfied that any document referred to in the complaint is voluminous, he shall instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in court. ”

- (7) section 238 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted namely:-

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“(2) When, in any warrant-case instituted upon a complaint made by a public servant acting or purporting to act in the discharge of his official duties, the accused is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207A.”

(8) for section 239, the following section shall be substituted, namely:-

When the accused shall be discharged

“ **239.** If, upon considering the police report and the documents sent with it under section 173 or upon considering the complaint made by the public servant acting or purporting to act in the discharge of his official duties and the documents sent with it and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.”

(9) in section 244, in sub-section (1) of, for the words, “When in any warrant-case instituted otherwise than on a police report, the accused appears” the words “When in any warrant-case instituted otherwise than on a police report, or upon a complaint made by a public servant acting or purporting to act in the discharge of his official duties, the accused appears” shall be substituted.

(10) in section 249 , for the words, “When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent,” the words “When the proceedings have been instituted upon complaint other than a complaint made by a public servant acting or purporting to act in the discharge of his official duties, and on any day fixed for the hearing of case, the complainant is absent,” shall be substituted.

(11) in section 256, in sub-section (1) ,for the words, “If the summons has been issued on complaint, and on the day appointed for the appearance of the accused,” the words “ If the summons has been issued on complaint, other than a complaint made by a public servant acting or purporting to act in the discharge of his official duties, and on the day appointed for the appearance of the accused,” shall be substituted.

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Amendment of the Motor Vehicles Act, 1988 (59 of 1988)

14. In the Motor Vehicles Act, 1988,

(a) in section 166 after sub-section (4), the following sub-section shall be inserted, namely :-

“(5) Notwithstanding anything in this Act or any law for the time being in force, the right of a person to claim compensation for injury in an accident shall upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury, or not.

Provided that in cases where the cause of death is not relatable to or has no nexus with the injury, the compensation shall be restricted to the period between the date of injury and the date of death of the person injured.”

(b)after section 217, the following section shall be inserted, namely :-

Certain pending proceedings relating to compensation under the Motor Vehicles Act, 1939 not to abate:

“217A. Notwithstanding anything contained in the Motor Vehicles Act, 1939 or any law for the time being in force, in respect of claims for compensation under the said Motor Vehicles Act, 1939 which are pending at any stage, at the date of commencement of this Act in any Tribunal or Court, the right of an injured person to claim compensation shall upon the death of the injured person survive to his legal representatives, irrespective of whether the cause of death was relatable to or had any nexus with the injury or not:

Provided that in cases where the cause of death is not relatable to or has no nexus with the injury, the compensation shall be restricted for the period between the date of injury and the date of death of the person injured.”

Transitory Provisions

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15.(1) The provisions of section 79 of the Negotiable Instruments Act, 1881,as amended by section 3 shall apply, to suits and appeals pending at the commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material times.

(2) The provisions of clause (c) of section 58 of the Transfer of Property Act, 1882 as amended by section 4 shall apply, to all agreements of re-conveyance where the period of three years referred to in the proviso to that section has not expired at the date of commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material times.

(3) The provisions of sub-sections (7) to (9) of section 6 and section 6A as inserted in the Revenue Recovery Act 1890 by section 5 shall apply to all proceedings for sale where the sale proclamation has not been issued at the date of the commencement of this Act.

(4) The provisions of clause (a) of the proviso to section 35 of the Indian Stamp Act, 1899 as amended by section 6 shall apply, to suits pending at the commencement of this Act where the objection relating to the admissibility of the instrument has not been disposed of by the court at the commencement of this Act.

(5) The provisions of sub section (1) of section 34 of the Code of Civil Procedure, 1908 as substituted by clause (a) of section 7 shall apply to suits and appeals, pending at the commencement of this Act.

(6) Rule 12 of Order XX of the First Schedule to the Code of Civil Procedure 1908 and rule 18 of that Order as amended by sub-clause (A) of clause (b) of section 7 shall apply to suits where the evidence at the trial has not been closed at the commencement of this Act.

(7) Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 as substituted by sub-clause (B) of clause (b) of section 7 shall apply to all suits for foreclosure, sale, redemption and appeals pending at the commencement of this Act where a preliminary decree has not been passed at the date of such commencement .

(8) Rules 5 and 6 of Order XXXVIII of the First Schedule to the Code of Civil Procedure 1908 as substituted by sub-clause (C) of clause (b) of section 7 and Forms 5 and 5A in Appendix F of the said Code as substituted by sub-clause (D) of that clause, shall apply to applications for attachment before judgement and interim attachment before judgement made after the commencement of this Act .

(9) The provisions of section 306 of the Indian Succession Act, 1925 as amended by section 9 shall apply to all causes of action for assault as defined in the Indian Penal Code or for other personal injuries not causing the death of the party where no

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declaration has been made by the Court or Tribunal in regard to the abatement of the said action or where the correctness of any such declaration is pending in any appeal at the commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material times.

(10) The provisions of section 69 of the Indian Partnership Act, 1932 as amended by section 10, shall apply to suits and appeals pending at the commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material time.

(11) The provisions of sub-section (2) of section 18 of the Hindu Adoption and Maintenance Act, 1956 as amended by section 12, shall apply whether the marriage of the woman had been solemnised before or after the commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material times,.

(12) The provisions of clause (b) of Explanation to sub section (1) of section 125 of the Code of Criminal Procedure 1973 as amended by clause (1) of section 13 shall apply whether the marriage of the woman had been solemnised before or after the commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material times.

(13) The provisions of sub-sections (1),(1A) and (1B) of section 162 of the Code of Criminal Procedure 1973 as substituted for sub-section (1) of that section by sub-section (2) of section 13 and the provisions of section 164A of the said Code as inserted by sub-section (3) of section 13 shall apply where investigation has not commenced by the date of the commencement of this Act.

(14) The provisions of sub-section (2A) of section 174 the Code of Criminal Procedure 1973 as inserted by sub-section (4) of section 13 shall apply where inquest proceedings have not commenced by the date of the commencement of this Act.

(15) The provisions of-

(i) clause (b) of sub-section (1) of section 190 the Code of Criminal Procedure 1973 as amended by sub-section (5) of section 13 ;

(ii) section 207A of the Code of Criminal Procedure 1973, as inserted by clause (6) of section 13 of this Act;

(iii) sub-section 238 of the Code of Criminal Procedure as inserted by clause (7) of section 13 of this Act;

(iv) section 239 the Code of Criminal Procedure 1973 as substituted by clause (8) of section 13 of this Act;

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(v) sub-section (1) of 244 of the Code of Criminal Procedure 1973 as amended by clause (9) of section 13 of this Act;

(vi) section 249 of the Code of Criminal Procedure 1973 as amended by clause (10) of section 13 of this Act ; and

(vii) sub-section(1) of section 256 of the Code of Criminal Procedure as amended by clause (11) of section 13 of this Act,

shall not apply to complaints, inquiries and judicial proceedings pending at the commencement of this Act.

(16) The provisions of sub-section (5) of section 166 of the Motor Vehicles Act, 1988 as inserted by clause (a) of section 14 shall apply also to claims for compensation for injury where the death of the injured person has taken place before the commencement of this Act, as if the provisions of the said section as amended by this Act had been in force at all material times, where the claim has not been dismissed by a Court or Tribunal as having abated or where the claim is dismissed as abated, an appeal there from is pending, at the date of commencement of this Act.