

## **From The Editorial Desk**

Globally, how the central bank conducts its monetary policy could hardly be the subject of legal challenges as the decisions taken are mostly judgemental and non justiciable. Other functions like note issue may or may not be inherently justiciable. In practice, they are unlikely to generate any major legal dispute. On the other hand, the central bank, in its commercial dealings is in no different position from any other party, with a caveat regarding the availability of its assets for execution purposes. As regards the supervisory and regulatory function, a central bank faces liability issues of different kind, though equally important. An important preliminary issue involves sovereign immunity. The general rule is that as the central bank is a separate entity from the state, it has no sovereign immunity as regards commercial matters though there are important safeguards protecting its assets from execution. While considering the liability issues, it is most important to note that there exist differences between the legal systems, like in common law which is more judge-driven rather than principle-driven, the emerging law is more in the form of judicial decisions.

Recently, a symposium of legal experts was held under the aegis of BIS wherein the country papers of different jurisdictions showed clearly a wide range of liability to which a central bank or supervisory authority is potentially exposed, including criminal liability though it may be rare. Broadly categorised there are four categories in which the liabilities could be classified. Firstly, there is a public law review of decision-making involving judicial review of administrative action; secondly there is liability based on tort or delict, or rules of administrative law attaching liability in case of fault; thirdly there is liability based on breach of contract and lastly there is institutional liability or day today liabilities that any institution is bound to incur on account of say property or employment dispute etc. As the above classification is only provisional there are clear cases of overlaps. The liabilities that may arise on account of operation of payment system may not fall in any of the categories but at the same time it plays a crucial role. Another distinct potential area of liability may relate to ownership of assets. Difficult questions of ownership and also questions on issues of assumption of liabilities may arise in case of say a break up of a country formerly served by a single central bank. Common law actions which can be considered in the context of central bank's work may be either misfeasance in public office or other intentional tort. The common feature of the two actions is that it concerns, abuse of power in bad faith by public officers. Liability issues become acute when litigation is threatened, especially a cross border litigation. A defending litigant is clearly at a disadvantage in a different jurisdiction than his own, since he has to face unfamiliar location and language and alien local laws and procedure. In this context, it is worth considering some viable and practical alternatives to costly and time consuming litigation like arbitration or mediation and bring an unwelcome contest to an end.

In this issue, the Journal Section opens with an article on the complex legal issues relating to the winding up of NBFCs which commit default in repayment of deposits. This is followed by another article of topical importance, namely on the tax implications of the Information Technology Act, 2000.

The Judgement Section presents a variety of decisions of the Supreme Court and the High Courts including the recent judgement of the Supreme Court upholding the amendments to Section 45S of the Reserve Bank of India Act prohibiting acceptance of deposits by certain categories of unincorporated bodies. The Legislation Section covers the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000. The Book Review Section covers 'Bharat's Cyber and E-commerce Laws'. Further, we have all our usual features like Bibliography, LD News and Mail Bag.

**N.V. Deshpande**  
Principal Legal Adviser