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From the Editorial Desk

A Society free from any scam is unthinkable. India has its own share of scams: "Shoe Scam", "Animal Husbandry Scam", "Securities Scam", "Housing Scam", "Urea Scam", "Bihar Fodder Scam", etc. etc. .A Joint Parliament Committee (JPC) was constituted to investigate, "the largescale irregularities and malpractice, which were noticed in the securities transactions of banks" in 1992 which came to be described by some people as "The scam of the century". This is what the JPC said in its report about this scam

"the scam is basically a deliberate and criminal misuse of public funds through various types of securities transactions with the aim of illegally siphoning off funds of banks and PSUs to select brokers for speculative returnsThe most unfortunate aspect has been the emergence of a culture of non-accountability, which permeated all sections of the Government and banking system over the years. The state of the country's system of

governance, the persistence of non-adherence to rules, regulations and guidelines, the alarming decay over time in the banking systems has been fully exposed. These grave and numerous irregularities persisted for so long that eventually it was not the observance of regulations, but, their breach that came to be regarded and defended as "market practice"..... What is more apparent is the systematic and deliberate abuse of the system by certain unscrupulous elements. It is abundantly clear that the scam was the result of failure to check irregularities in the banking system and also liberalization without adequate safeguards. There is also some evidence of collusion of big industrial houses playing an important role. It is because of these elements that the economy had to suffer and while some gained thousands of crores, millions of investors lost their saving.....”

It is to be remembered that unless and until one is found guilty under the scam, he cannot be seen in the eye of law as guilty. The Apex Court has posed a question how to prevent in future the scam of the types at hand, "Housing Scam", and observed: *"It seems that no scam can be avoided howsoever rigid rules may be framed or guidelines laid down. Scams are creatures of moribund mind and low moral character.* With various types of scams all around, it is too much to expect that we can provide any formula by which any scam can be prevented" [(1997)1 SCC 444 Shiv Sagar Tiwari vs. Union of India and Others]. Hence, scams should not be allowed to derail progress and the show must go on.

This issue opens with an article on Indian banking dealing with the emerging challenges, strategies and solutions from a legal perspective. Thereafter, we present an article on the interpretation of the laws, in particular, on the principle of `contemporanea expositio'. It is followed by an article of topical interest, on attachment of superannuation dues payable to legal heirs of deceased employees in the context of different statutes like Civil Procedure Code, Provident Funds Act and the Payment of Gratuity Act.

The Judgements Section, covers as usual the decisions of the Supreme Court and the High Courts on a variety of subjects. In the Legislation Section, we present the Financial Companies Regulation Bill, 2000, which is proposed to be enacted to substitute Chapters III B and III C of the Reserve Bank of India Act to regulate non-banking financial companies and prohibit acceptance of deposits by unincorporated bodies. Apart from this, we have included a write-up on an in-house training programme for officers conducted by us recently and also the other usual features, namely Bibliography, Book Review (on Protection of Human Rights by C. Chinna Vyran, Advocate), LID News and Mail Bag.

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Journal Section
Indian Banking Emerging Challenges Strategies
and Solutions - Legal Perspective*
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Economic reforms have given banks an opportunity to expand beyond its traditional services. The stage to this end was set in the early part of last decade and from then on the outlook of the banking industry changed completely to meet the challenges from within and outside too. Law as an instrument of management is able to meet the changing needs of the banking industry or not is the question discussed in this article. The focus of this article is mainly around Operational and Technological issues which the bankers are expected to tackle and which also throw everyday newer challenges to them.

The challenge of NPAs has to be met on two fronts, viz., past or accumulated NPAs and future NPAs. While the former will have to be quickly eliminated and the future ones will have to be certainly prevented. Elimination is possible if there could be found quicker methods of compromise or adjudication. No doubt, steps have been taken but this has not proved to be effective. So newer strategies have to be evolved and tested. Eventhough, Settlement Advisory Committees could help the banks to a certain extent in this direction we may have to consider employing more alternative dispute resolution mechanisms in the process. The existing Lok Adalat system may be a good forum but needs to be changed suitably to deal with banking matters and may require an amendment to Legal Services Authorities Act, 1987. Similarly, the Banking Ombudsman's set up can be used to bring about settlement of past cases by giving the Banking Ombudsman the necessary powers of an arbitrator. Also centres for mediation and conciliations need to be opened in large numbers manned by professional mediators and conciliators offering their services to settle these disputes. However, for this the parties have to agree to avail of their services. These initiatives could help not only settling the past disputes but also to some extent prevent the future-disputes.

On adjudication front the Debt Recovery Tribunals had no doubt suffered set backs in the beginning when the Delhi High Court set aside the DRT Act as unconstitutional. However, with the Supreme Court monitoring the case pending before it, the Government was directed to take necessary steps. The Government amended the Act to improve greatly the functioning of the DRTs. Though the number of benches to deal with these cases has increased considerably the procedure before it could not be simplified further and made more summary than the one now adopted. Also steps like service of notices and recovery of the dues could have been privatised to a certain extent to solve the difficulties of the availability of infrastructural facilities to the DRTs. It is suggested that Dasti service of notice or alternatively courier service may be the mode of service of notice adopted by DRTs to reduce the delay occurring in these areas. Likewise, in the recovery of dues use of private professional agencies could be considered to make the recoveries more effective. DRTs may also consider delegating pre-trial procedures to the Registrars or any other administrative authority and use its time more for judicial work.

One of the methods suggested for the reduction of the NPAs is Corporate Debt Restructuring (CDR). The process is primarily rescheduling the debt portfolio of the borrowers among its creditors to help the borrowers in the revival of projects and continue operations through reduction in existing debt burden and establishment of new credit lines with implied assumption that the lender would prefer reduction in risk to optimization of returns. However, such programmes may succeed only if there is effective bankruptcy and foreclosure laws. Mechanisms like securitisation, factoring or forfeiting and assignment of receivables are also relevant which not only make recovery of dues efficient but also improve the liquidity of the

banks. Developing Asset Reconstruction Companies could also help the banks in assigning their debts as assets to outside agencies for a discounted price and thereby clean up their balance sheets. Implementation of these methods would however require major stamp duty law reforms.

One of the most important challenges facing banking in India is the need for effective utilization of technology in the various facets of banking aimed at not only for improving customer efficiency but also for improving management information systems, better housekeeping including empirical decision making. Technology is also going to cause a radical change in the payment and settlement systems. For an active, smooth and large scale, participation of the various market players there is a need to have an appropriate legal framework in place. In the absence of such framework, appropriate documentation can serve the purpose. Since the technologies would be global, the documentation we seek could be available from the model agreements produced by the international agencies like UNCITRAL, etc. In any case, lack of adequate laws cannot be a ground for rejecting a new technology.

Globalisation has ushered in restructuring of the banking and financial sector through a series of amalgamations and mergers. This has also brought in convergence of different activities and businesses in the banking sector. It has introduced newer technologies and techniques in areas like fund management and security creation. Innovative products are also resorted to catering to meet the changing needs of the markets. New frontiers in the activities of the bank call for understanding and upgradation of skills in areas like risk management. In the absence of relevant laws to govern innovative products and activities the contracts between the parties will play a vital role which calls for skills in the development of proper documentation.

Slower legal processes are always blamed for tardiness in the economic reform process. Though the democratic set up of the country has certainly not proved to be a hurdle, the coalition type of government in a democratic set up with the attending policy drift has definitely caused a stow down in the economic and resulting legal reforms. This is clearly evident from the number of bills awaiting legislative enactment. In this scenario it would be useful to think of methods which do not need any legislative reforms. Banks can think of looking forward to policies which will take care of concerns arising out of social awareness. In the areas like lending to borrowers' units causing pollution, banks can assume responsibility through appropriate policies rather than act under the compulsion of legislation like Lenders Liability Act. Also, banks could evolve and codify existing banking practices into best banking practices, which will have the effect of law.

In areas like introduction of new accounts, adoption of codified best practices will remove uncertainties and disparities prevailing in the market. The codification of best practices will be less cumbersome, compared to passing of a new law and will lend flexibility and efficacy to the system. May be an Institution like Indian Banks' Association could consider taking up such a project in the interest of the banking community. To conclude it may be stated that while the legal reforms in the form of legislative enactment could be ultimately achieved, steps short of legislative amendments like codification of existing banking practices could be considered as an alternative strategy to meet the emerging challenges. Similarly, in meeting technological challenges posed by new technologies, the absence of adequate laws should not be the cause for not adopting the new technologies as well drafted contract and resulting documentation can serve

the purpose and object of the law between the parties to the transaction. In this context, standardization of the documents is called for amongst the players in the market.

* This is reprint of an article published in the IBA Bulletin, March 20001, Special Issue

Contemporanea Expositio - And Executive Construction

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The Rule

"IT is said that the best exposition of a statute or any other document is that which it has received from contemporary authority the meaning publicly given by contemporary or long professional usage is presumed to be the true one, even where the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near the time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well with the sense then attached to legislative expression".

The above passage from Maxwell' puts in a nutshell the rule of *Contemporanea expositio* and its rationale.

2. The rule was stated by Mookerjee, J² in the following terms :

"It is a well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."

This has been quoted with approval by the Supreme Court³ in subsequent cases.

3. The statutes, which confer powers on executive authorities have to be implemented and executed by such authorities. These authorities interpret the statutes concerned as they understand and implement the same. This paper attempts to extract relevant observations of the Supreme Court and examine the extent to which the courts may refer to the interpretation given by such authorities while interpreting the statutes.

4. Ancient and Modern Statutes

The above rule of interpretation is not usually applied while interpreting modern statutes. The Supreme Court' was examining the question whether the word `sugar' used in the E.P. Molasses (Control) Act 1948 included `khandsari sugar'. Even though the administrative authorities had understood the Act as not referring to khandsari sugar, the Court held that the Act was quite clear that it included khandsari sugar also and observed⁵ as under.

"Even if it is true that persons who dealt with the statute understood its provisions in a restricted sense, such mistaken construction of the statute did not bind the Court so as to prevent it from giving it its true construction".

5. The Supreme Court⁶ however did not apply this rule while holding that the confession made before an excise sub-inspector is inadmissible in evidence under Sec. 25 of the Evidence Act and said that the police officer referred under Sec. 25 includes the excise sub-inspector. If this rule were applied, the expression `police officer' used in the 1872 statute could not have covered an excise sub inspector which position was unknown at that time. The Court observed⁷.

"We, however, agree that it would be inappropriate to attach wide meaning to the words used by the legislature in a law made in remote ages when society was static and that the position would be different with respect to words used in a law made in a modern progressive society in which the frontiers of knowledge are fast expanding. The Evidence Act was enacted at a time when already a revolution in men's ideas had set in and considerable scientific advances had already been made. The maxim laid down by Coke, cannot therefore properly be applied for construing the language used by the Legislature in S.25 of the Evidence Act."

6. Approach to Modern Acts

Court's approach to ancient Acts and modern Acts has been different in this regard. That rationale for such different approaches has been stated in the following case. The question was whether the electric lines used for the purpose of wireless station are telegraph lines under the Telegraph Act, 1885. Had this rule been applied, as the question of the legislature imagining wireless in 1885 did not arise, electric lines used for wireless station could not be regarded as telegraph line. The Supreme Court⁸ did not apply the above rule of construction and held that the electric lines in question are telegraph lines and observed⁹ as under.

"The legal position may be summarised thus: The maxim *contemporanea expositio* as laid down by Coke was applied to construing ancient statutes, but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in term of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. *It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made.* But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for *a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity.* Indeed, unless a contrary intention appears, an interpretation should be given to the words to take in new facts and situations, if the words are capable of comprehending them. We cannot therefore, agree with

the learned judges of the High Court that the maxim *contemporanea expositio* could be invoked in construing the word "telegraph line" in the Act". (Emphasis added)

7. Highly Persuasive

This rule has however been applied while interpreting the more recent Income Tax Act 1961. The Supreme Court¹⁰ applied the principle of *contemporanea expositio* to interpret the provision of sub. sec, (2) of the Sec. 52 of the Income Tax Act, 1961 which provided that if

"the fair market value of a capital asset transferred by an assessee as on the date of transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than 15 per cent of the value declared, the full value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair and market value on the date of the transfer".

8. CBDT had issued two circulars to Income Tax Officers concerned stating that they should keep in mind the assurance given by the Minister of Finance and that the provisions of sec. 52 (2) of the Income Tax Act may not be invoked in cases of bonafide transactions. Even though, sec. 52(2) did not specifically state that it should not be invoked to the cases of bonafide transactions, the Supreme Court referred to the circulars in question and held that it cannot be invoked to cases of bonafide transactions. The following observations explain in clear terms the extent to which such clarifications can be relied on in interpreting statutory provisions.

"The rule of construction by reference to *contemporanea expositio* is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction, (1940 Edn.) where it is stated in paragraph 219 that Administrative construction (i.e. contemporaneous construction placed by *administrative or executive officers charged with executing a statute*) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive" (Emphasis added).

9. Since Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub-sec.(2) as limited to cases where the consideration for the transfer has been understated by the assessee, it was regarded as a strong circumstance supporting the construction that *bona fide* transactions did not attract Section 52 (2) of Income Tax Act. Where the language of an Act is ambiguous and difficult to construe, the court may, for assistance in its construction refer to rules made under the provisions of the Act, especially where such rules are by the statute authorising them directed to be read as part of the Act.

10. Ambiguous Expression

This rule may be applied conveniently when the language of the statute is ambiguous. The Bombay Municipal Corporation had been treating the landlord of leased premises as primarily liable to pay the property tax. Even though it was possible to interpret section 146(2) of Bombay Municipal Corporation Act 1888 as imposing primary liability for payment of property tax upon the lessee. The Supreme Court¹¹ gave due weightage to the interpretation given by the authorities and observed¹² as under.

'..... where the meaning of an enactment is obscure, the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct for a long period of time. The principle applicable is "*optima legum interpret est consuetudo*"¹³ "'

11. Executive Construction

The persuasive effect of uniform and consistent departmental practice on the courts has been summarised as under

.....a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the-time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the Court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as *the length of time for which it is followed, the nature of rights and property affected by it, the injustice resulting from its departure and the approval that it has received in judicial decisions or in legislation*¹⁴ (Emphasis added)

12. Conclusion

It is not possible to deduce in clear terms as to when a statute may be regarded as modern and when it may be regarded as ancient. The rule was applied¹⁵ while interpreting Income Tax Act, 1961 but the rule was not applied¹⁶ while interpreting the Telegraph Act, 1885. In 1964, the Court¹⁷ referred to Evidence Act, 1872 as a modern legislation. Whether a statute is modern or ancient does not therefore appear to be the decisive factor for the application of this rule.

13. Further, for the courts to rely on the interpretation of the executive authority, it has not been laid down as to for what length of period the executive authority should have implemented the provisions as per its own understanding. It is in fact not possible to simplify any rule of interpretation to such arithmetic precision. It is also not possible to identify the nature of rights, which will be protected by the courts by applying this rule.

14. When an executive construction is challenged before a court, it is for the court to interpret the provisions and say whether the executive is right or wrong. If executive action could be justified merely on the basis of this rule, perhaps no executive action could be successfully challenged. It may be observed from the above decisions that the courts have referred to executive decision as an additional ground to support their conclusion and not as the sole ground for their conclusion. Executive construction is given due weight by the court while interpreting the provisions of the

statute and unless it is clearly wrong, it will not be overturned. In spite of high persuasive force of executive construction, there should be other valid grounds to justify executive action.

The commission has no authority to enforce these finding. These findings may never result in the respondent feeling the pinch of administrative action.

- Douglas, William O. Federal Power Comm'n v. Hope Natural Gas Co., 320 US. 591, 619 (1944)

¹ Interpretation of Statutes, 12th Edition, page 264.

² Baleshwar Bagarti v. Bhagirathi Dass, ILR 35 701.

³ Deshbandhu Gupta & Co. v. Delhi Stock Exchange Association Ltd., (1979) 4 SCC 565 & K. P. Varghese v. ITO (1981) 4 SCC 173.

⁴ Punjab Traders & Others v. State of Punjab and Ors, AIR 1990 SC 2300.

⁵ Ibid at 2304.

⁶ Rajaram v. State of Bihar, AIR 1964 SC 828.

⁷ Ibid at 836.

⁸ Senior Electric inspector v. Laxminarayan Chopra, AIR 1962 SC 159.

⁹ Ibid at 163.

¹⁰ K.P Varghese v. ITO (1981) 4 SCC 173.

¹¹ National Grindlays Bank Ltd. v. Bombay Municipal Corporation, AIR 1969 SC 1048.

¹² Ibid at 1052.

¹³ *Optimus Interpres Rerum Usus- 'Usage is the best interpreter of things'* - Broom's Legal Maxims 10th Edition page 623.

¹⁴ Corpus Juris Secundum Vol. 82, pp 761 to 774 cited as authority for this proposition in Principles of Statutory Interpretation by Justice G.F Singh, Sixth Edition 1996 pg. 221.

¹⁵ K.P Varghese supra.

¹⁶ AIR 1962 SC 159.

¹⁷ AIR 1964 SC 828.

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In this write-up, judgements of the Courts of law are discussed, in which the issue examined was whether the superannuation dues, namely provident fund and gratuity payable to legal heirs of a deceased employee can be the subject matter of attachment by a Court in the execution of a decree.

1. Statutory Provisions

(A) Code of Civil Procedure

Section 60(1) of the Code of Civil Procedure enumerates various items of property which shall not be liable to attachment and sale in execution of a decree. Clause (g) of Section 60(1) mentions stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions. Further, Clause (k) of Section 60(1) specifies all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, for the time being applies in so far as they are declared by the said Act not to be liable to attachment. Thus, in terms of the said Clauses (g) and (k) of Section 60(1), gratuity and provident and payable to employees are exempt from attachment.

(B) Payment of Gratuity Act, 1972

Section 13 of the Payment of Gratuity Act, 1972, provides that no gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any Civil, Revenue or Criminal Court.

(C) Provident Funds Act, 1925

Section 3(1) of the Provident Funds Act, 1925 provides that a compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned, or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to, or have any claim on any such compulsory deposit. Further, sub-section (2) of Section 3 protects any sum standing to the credit of any subscriber from attachment in case he dies and it is payable to any dependent of the subscriber. This is subject to three conditions, viz., (i) deductions permissible under the Act may be made, (ii) the dependent should be the widow or child of the subscriber or depositor and (iii) the rights of an assignee under an assignment made before the commencement of this Act are protected. Thus, any sum standing to the credit of a subscriber shall vest in the dependent free from any debt or other liability incurred by the deceased or incurred by the dependent before the death of the subscriber.

(D) Employees' Provident Funds & Miscellaneous Provisions Act, 1952

In terms of Section 10(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such amount. Further, in terms of sub-section (2) of Section 10 any amount standing to the credit of a member in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member.

2. Union of India vs. Jyoti Chit Fund & Finance & Others (AIR 1976 S.C. 1163)

Issue

The appellant, the Union of India, had filed the above appeal, by special leave, against the order of dismissal in Civil Revision made by the Delhi High Court, upholding the view of the first court overruling the contention of the State, objecting to the attachment of certain provident fund and pension dues held by Union of India (on behalf of the Rajya Sabha Secretariat) in trust for the judgement-debtor who had been employed in the Rajya Sabha Secretariat.

Observations of Court

The following is an extract from the judgement containing the important observations made by the Supreme Court regarding attachment of superannuation dues:

"We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possibly be entertained on this question, the decision in *Radha Kissen* (1969) 3 SCR 28-(AIR 1969 SC 762) erases them. Indeed, our case is fortiori one, on the facts. A bare reading of *Radha Kissen* makes the proposition fool-proof that so long as the amounts are provident fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and overrule the contention."

Decision

The appeal was allowed and the Court of the Subordinate Judge was directed to go into the merits of the objection raised by the Union of India as to whether the amount held by it on behalf of the judgement-debtor represents provident fund and compulsory deposits, excluded from attachability in execution of civil decrees under the relevant provisions of the Provident Funds Act, the Pensions Act and the Civil Procedure Code.

3. Usman Abubakar Sani vs. Chief Accounts Officer, G.I.P. Railway (AIR 30, 1943 Bombay 453)

Issue

Whether the amount of gratuity credited to the account of deceased employee is liable to attachment in execution of decree against deceased represented by legal heirs.

Observations of Court

The petitioner had obtained a decree against one S.D. Cornelius, an employee of the G.I.P Railway Company, for the recovery of Rs. 2,600/- with future interest and costs. The judgement debtor Cornelius died in April, 1940 and the petitioner proceeded to execute the decree against his widow and legal representative, Mrs. Cornelius for the recovery of the amount by the attachment of the arrears of salary of Mr. Cornelius and other amounts in the hands of the Railway Company as the moneys due to him. The executing court held that the amount of gratuity credited in the account of the deceased judgement debtor was not liable to attachment under Section 60, sub-section (1)(g) Civil Procedure Code and the petition was dismissed. The Bombay High Court observed that the orders governing the grant of gratuities to subordinate staff of the G.I.P Railway Company as contained in Exhibit 37, and Rule 1 provides that the agent may grant at his discretion as a reward for good, efficient, faithful and continuous service, gratuities on retirement to subordinate railway employees or to their widows and children dependent on them. That rule adds that it must be understood that the grant of the gratuities cannot be claimed as a right. The Court referred to a decision in 25 Bom.L.R. 599 in which it was held that such a gratuity is in the nature of a gift and it is to be given at the discretion of the agent and cannot be claimed by the employee as of right. Even after the agent decides to pay the gratuity, the company does not ipso facto become a trustee for the employee in respect of that amount. It was argued that since the gratuity was credited to the account of Mr. Cornelius, this amounted to a completion of the gift by delivery of this amount. The Court observed that in this case the amount was not credited to any living person and there can be no delivery of moveable property to one who is dead. The company had to find out whether after death of the employee, there was any such person entitled to the gratuity, and till then the amount was credited to the account of the deceased for the sake of convenience. The Court observed that it does not mean that thereby the amount became a part of the Provident Fund account of the deceased or that the title to it passed either to the widow or to any other dependent of the deceased. The amount was not payable to the estate of the deceased employee.

Decision

The Court took the view that the amount still remained in the hands of the company and was not credited to the account of the person who was entitled to receive it. Therefore, the mere fact that it was credited to the account of the deceased employee does not amount to a delivery as contemplated by Section 123 of Transfer of Property Act. The Court held that hence, the amount of gratuity in the hands of the company was not liable to attachment.

4. Ramwati vs. Krishnan Gopal and Others (1988 LAB.I.C. 1298, Delhi)

Issue

Whether the amount of gratuity which was payable in respect of deceased employee is liable to attachment in execution of decree passed against legal heirs of the employee. The decree was executable only against the estate of the employee in the hands of his legal heirs.

Observations of Court

The decree holder had filed a suit for recovery of money borrowed by the employee from him, against the legal heirs of the employee who had died. The suit was decreed. The decree holder filed execution application seeking attachment of dues of the deceased employee in the hands of his employer, Delhi Cloth & General Mills, which included provident fund and gratuity.

The Delhi High Court observed that Section 60(g) of the Civil Procedure Code provides that the provident fund and gratuities allowed to the pensioners of the Government or or a local authority or of any other employer are not liable to be attached in execution of a decree. The gratuity in question was payable to the employee by his employer. If the employee had been alive he would have been definitely paid this gratuity and the same could not have been attached even if money decree was obtained against the employee. The Court observed that the question to be decided is whether with the death of the employee the nature of the said gratuity has changed in its character or it has to be termed as the gratuity still payable to the deceased.

The Court referred to the decision in *Diwansingh vs. Kusimbai* (1969 MPLJ, SN, 63) where the Madhya Pradesh High Court had held that the gratuity lying with the employer was attachable on the death of the employee as the amount becomes a debt payable by the employer to the legal heirs of the employee. Interpreting Section 60(g) of the C.P.C., the Court opined that in terms of its provisions, only if the gratuity is payable to the employee then the same is not liable to be attached and that if the employee is dead, obviously the gratuity cannot be deemed to be payable to the employee. Hence, if the gratuity becomes payable to the heirs of the employee, the same becomes attachable in the hands of the employer since the employer is legally bound to pay the gratuity to the legal heirs. The Court was in complete agreement with the ratio laid down by the Madhya Pradesh High Court in the said judgement.

Decision

The Court held that after the death of the employee, the gratuity cannot be deemed to be payable to the employee and as the gratuity becomes payable to the heirs of the employee, it becomes attachable in the hands of the employer in execution of a decree.

5. Sathyavathy vs. Bhargavi (deceased), Vijayan & Another (AIR 1991 Kerala 377)

2 Issue

Whether once the gratuity amount becomes an asset of the deceased person, still it can be stated as gratuity amount and still that amount will retain the character of gratuity, so as to get exemption under Section 60(1)(g) of the Civil Procedure Code.

Observations of Court

The petitioner who is the decree holder secured a money decree against the first respondent (since deceased) who had borrowed from him. The petitioner filed an execution petition for realization of the amount and wanted to attach the provident fund and gratuity amount due to the first respondent. The Court observed that admittedly the first respondent earned the gratuity amount but since she has died, the amount can be claimed only by the legal representatives as the asset of the deceased.

The Court observed that it is difficult to say that when the attachment was sought the gratuity amount is held by the employer in trust for the judgement - debtor, because now the judgement debtor is dead and no one can have property in trust for a dead person. The character of the property held by the employer can only be a debt to be paid to the legal representatives of the deceased. If the assets of the deceased came in the possession of the legal representatives of the deceased, the properties are liable to be attached. The Court referred to and relied upon the decision in *Diwansing vs. Kusimbai* reported in 1969 MPLJ, 63.

Decision

The amount due as gratuity to deceased employee/ judgement debtor and payable to his legal representatives is not exempt from attachment under Section 60(1)(g) of the Civil Procedure Code.

6. Thomas George vs. Soudamini & Others (Indian Law Reports 1997 (1) 364)

Issue

Whether the amount of provident fund contribution of the subscriber and held in deposit by the State Bank of India where the subscriber was employed is exempt from attachment, under Section 60(1)(k) of the Code of Civil Procedure.

2 Observations of Court

An employee of State Bank of India (since deceased) had borrowed money from the appellant/decree holder. The appellant moved the lower court for attachment of a sum of Rs. 50,000/- held by the SBI, as amounts payable to the legal representatives from out of the provident fund of the subscriber. The Court below negated the claim for attachment on the

ground that Section 60(1)(k) of the Civil Procedure Code exempts from attachment the provident fund dues.

The Court observed that the amount sought to be attached represents the provident fund contribution of the subscriber and payable under the State Bank of India Employees' Provident Fund Rules to the dependents of the subscriber. The Court referred to the provisions of Section 3(2) of the Provident Funds Act, 1925 in terms of which any sum standing to the credit of the subscriber in any Provident Fund at the time of his death, subject to the deductions mentioned therein vests in the dependent(s), free from any debt or other liability incurred either by the deceased subscriber or by the dependent(s) prior to the death of the subscriber. The Court opined that there is a statutory vesting of the provident fund on the dependents after the death of the subscriber under Section 3(2) of the said Act which on such vesting becomes the absolute property of the dependents and cannot be regarded as assets of the deceased subscriber in the hands of the dependents. Such amount is free from any liability from being attached.

The Court took the view that the provisions contained in Section 60(1)(k) of the CPC is one conceived in public interest and the refusal to order attachment of the sum standing to the credit of the deceased subscriber cannot be held to be invalid. This is a pointer of the legislative intent in Section 3(2) of the said Act that the amount in question is immune from attachment. The Court relied upon the decisions in *Abdul Waheedkhan vs. Laliben Bheinabhai* (1992, 1, Cur. L.R.164). The Court observed that the consensus of judicial opinion whether it be under the said Act or under the 1952 Act is that the Provident Fund amount is completely immune from attachment under any decree or order of a Civil Court.

Decision

The Court held that the provident fund amounts standing to the credit of the subscriber on his death gets vested on his dependents and the same is immune from any liability for attachment for the debt incurred by the subscriber.

7. Abdul Waheedkhan vs. Mrs. Reny Charles (AIR 1965 Mysore 303)

Issue

- (i) Whether the provident fund amount which vests in the widow of the deceased subscriber is liable for attachment for debt incurred by her before the death of the subscriber.
- (ii) Whether the benefit conferred by the P.F. Act, 1925 as to the immunity from attachment of the P.F. so long as it stands to the credit of the subscriber can be waived by the person on whom the benefit has been conferred.

Observations of Court

Issue (i)

The appellant/deed-holder in execution proceeding applied for attachment of the provident fund dues belonging to the deceased Mrs. Reny Charles, the judgement debtor and payable by her employer Southern Railway. The Southern Railway filed objections to the effect that since the statutory provisions give immunity to provident fund from attachment, the attachment is contrary to the provisions of law and is void. The Court of Civil Judge as well as the first appellate court, the Court of District Judge held that the attachment was void under the provisions of Section 3 of the Provident Funds Act read with Section 60(k) of the Civil Procedure Code.

The High Court referred to the provisions of Section 3(2) of the Provident Funds Act, in terms of which any sum standing to the credit of the subscriber in any provident fund at the time of his death, vests in the dependent free from any debt or liability incurred either by the deceased subscriber or by the dependent prior to the death of the subscriber. The Court observed that the debt was due jointly by the husband and his wife and the attachment was effected prior to the date of decree for the joint debt. The attachment which was also effected before the death of the subscriber, for realization of dues payable by his wife and incurred before the death of her husband is clearly hit by the provisions of sub-section (2) of Section 3 of the P.F. Act, 1925.

Regarding the contention of the petitioner that the provident fund has ceased to be a provident fund after the death of the subscriber, the Court took the view that this contention cannot be supported either by any of the provisions of the P.F. Act or by any other authority. The Court observed that the words "until the happening of some specified contingency" in the definition of "compulsory deposit" under Section 2(a) of the P.F. Act of 1925 does not affect the protection extended to the provident fund after it becomes payable on the happening of the specified contingency, while it still stands to the credit of the subscriber.

Issue (ii)

The important observations of the Court are as follows:

"It may be stated as a general rule that if the statute is solely for the benefit of a person, he may waive his right or the benefit, if he thinks fit, or give up the rights of a personal or private nature created under an agreement, but he cannot waive a benefit conferred by a statute which has public policy for its object. There is a difference between a statute solely meant for the benefit of an individual, and a statute which has public policy for its benefit, that is, an advantage or benefit intended for an individual and one in which the public have an interest. And therefore an individual who has the benefit given to him by a statute may waive it if he thinks fit, but he cannot waive it where the public have an interest. Therefore the rule of waiver cannot apply to matters based on public policy".

The Court relied upon the decision in *Graham vs. Ingleby* (1845) 1-Ex-651, where it has been stated "that an individual cannot waive a matter in which the public have an interest". The Court was of the view that once it is clear that the prohibition against attachment is absolute and such prohibition is based on the public policy, then it is not permissible for any person to contract or agree that such a prohibition shall not operate on the provident fund standing to the credit of the depositor, and any such agreement being against public policy would be void in law.

Decision

The Court held that the provident fund so long as it stands to the credit of the subscriber is immune from the liability of attachment for the debt incurred by the wife, the dependant of the subscriber prior to his death. The Court further held that the contention of the appellant that it was open for the dependant of the subscriber to waive her right and agree to have the amount brought into the Court for payment to the decree holder in satisfaction of his decree, cannot be sustained. The appeal was dismissed.

8. High Court of Patna - Civil Revision No. 350 of 1990 Ram Autar Agarwal vs. Reserve Bank of India & Another - Judgement dated 17th October 1997 (Unreported)

Issue

Whether the amount of gratuity and provident fund of an employee adjudged as insolvent under the Provincial Insolvency Act, 1920 are liable to attachment for satisfying the dues of the creditors.

2 Observations of Court

Shri Dhiraj Kumar Bose, an employee of the Reserve Bank of India (since deceased) was adjudged as an insolvent by the District Judge Munger under the provisions of the said Act. One of the creditors filed an application before the Court for directing the employer to remit the provident fund, gratuity and other dues payable to, the insolvent to the Court. The Reserve Bank filed objections to the effect that the provident dues and gratuity were not liable to attachment in view of the provisions of Section 13 of the Payment of Gratuity Act, Section 3 of the Provident Funds Act and Section 60(1)(g) and (k) of the Civil Procedure Code. The District Judge by his order held that the gratuity and provident fund payable to the deceased was not liable to attachment. The creditor had filed this revision petition before the High Court against the said order.

The Court observed that it is an admitted position that the provisions of the P.F. Act, 1925 and Gratuity Act, 1972 are applicable in this case and referred to the relevant provisions which gives immunity from attachment. The Court pointed out that under Section 28(2) of the Provincial Insolvency Act after an order of adjudication is passed under the Act, all the property of the involvent shall vest in the Court or in a receiver, as the case may be. Further, sub-section (5) thereof provides that the property, which is exempt from attachment and sale in execution of a decree of Court under the provisions of the Code or by any other enactment at the time being in force, shall not be included in the property, which shall vest in the Court or in a receiver after jurisdiction.

The Court observed that a bare reading of the provisions contained in Sections 3 and 4 of the P.F. Act read with Section 60(1)(k) of the C.P.C. shows that the attachment of the provident fund amount is prohibited. The Court relied upon the decisions in *Union of India vs. Radha Kissen Agrawalla* reported in AIR 1969 SC 762 and *Jyoti Chit Fund and Finance*, reported in 1976,3

SCC, 607. In view of the aforesaid two judgements of the Supreme Court, it is clear that the provident fund is not liable to attachment so long it remains with the authority and is not paid to the employee, and once it is not liable to attachment, the same shall not be treated as a property of insolvent, which vests under Section 28(2) of the Provincial Insolvency Act.

Regarding gratuity, the Court relied upon the decisions in TISCO vs. Sultan Khan reported in AIR 1968, Patna 297 and held that only when gratuity is paid to the employee it becomes his property and as such, the Insolvency Court cannot attach the gratuity under the provisions of the said Act unless it is paid to the insolvent. Further, the Court referred to the provisions of Section 13 of the Gratuity Act and Section 60(1)(g) of the CPC and held that it gives total immunity to the gratuity from attachment in execution of a decree or order of a Court.

Decision

Once the gratuity and provident fund is not liable to attachment under the statutory provision, the same cannot be treated as a property of the insolvent having vested after adjudication in the Court or official receiver in view of the specific provision contained in Section 28(2) of the Provincial Insolvency Act.

9. High Court of Karnataka - Civil Revision Petition No. 3311/99 - S.D. Udayakumar vs. V. Mohan Kumar and RBI - Judgement dated 17th January 2000 (unreported)

2 Issue

The question to be decided was as to whether after the death of the employee, the plea of immunity from attachment in respect of gratuity is available to the legal heirs.

Observations of Court

The degree holder had filed an application before the Small Causes Court, Bangalore for attachment of provident fund and gratuity payable to the legal heirs of an employee of Reserve Bank of India, Bangalore (since deceased). The Reserve Bank (garnishee) filed objections and opposed the application for attachment on the grounds that under Section 60(1)(g)&(k) of the Civil Procedure Code, Section 13 of the Payment of Gratuity Act, and Section 3 of the P.F. Act, the provident fund and gratuity are exempt from attachment and among other decisions, relied upon the judgement of Patna High Court in Ram Autar Agarwal vs. RBI. By its order dated 15th August 1999, the trial court rejected the application for attachment. Against the said order, the petitioner filed the above civil revision petition before the Karnataka High Court challenging the order so far as it relates to gratuity. The petitioner referred to the judgement of the Kerala High Court in Sathyavathy vs. Bhargavi (AIR 1991, Kerala 377) in support of his contention that gratuity payable to legal heirs is attachable.

The Court observed that in the case of gratuity, it is only the provisions of Section 60(1)(g) of the C.P.C. which are relevant. The Court relied upon the decision of Patna High Court in the case of Ram Autar Agarwal vs. Reserve Bank of India and Another wherein it was observed that Section

13 of the Gratuity Act gives total immunity to gratuity from attachment in execution of the order of the Court.

Decision

The Court held that the amount is lying with the Reserve Bank of India and therefore, at this stage, it cannot be directed that the Reserve Bank is entitled to credit the amount of gratuity to the decree holder. The Court further observed that the question whether after receipt of the amount by the legal heir, it will retain its character as gratuity is not adjudicated at this stage.

10. Comments

It can be seen from the aforesaid judgements, that in respect of provident fund amount payable to legal heir of a deceased employee, the Mysore High Court in *Waheedkhan vs. Reny Charles*, the Kerala High Court in *George vs. Soudamini* and the Patna High Court in *R.A. Agarwal vs. RBI* have held that the provident fund is immune from attachment. The Courts have mainly relied upon the provisions of Section 3(2) of the Provident Funds Act, 1925 in terms of which any sum standing to the credit of the subscriber in any Provident Fund at the time of his death, subject to the deductions mentioned therein vests in the dependants, free from any debt or other liability incurred either by the deceased subscriber or by the dependants prior to the death of the subscriber.

In respect of attachment of gratuity payable to legal heir of a deceased employee, there appears to be conflict of judicial opinion. The Patna High Court in *R.A. Agarwal vs. RBI*, Karnataka High Court in *Udayakumar vs. M. Kumar* and Bombay High Court in *U.A. Sani vs. G.I.P. Railway* have held that the gratuity is immune from attachment. Whereas, the Delhi High Court in *Ramwati vs. Krishna Gopal* and Kerala High Court in *Sathyvati vs. Bargavi* have held that the gratuity is attachable. While interpreting the relevant statutory provisions, the Courts have taken the latter view, mainly on the ground that only if the gratuity is payable to the employee, then the same cannot be attached, but if the employee is dead the amount becomes a debt payable by the employer to the legal heirs, it becomes attachable.

The said statutory provisions have been conceived in public interest and reflects the intention of the legislature to confer the benefit of immunity from attachment in respect of provident fund and gratuity. Accordingly, the decision of the Courts should be in conformity with legislative intent and public interest. The conflicting judicial view to the effect that gratuity payable to legal heirs is attachable can perhaps be attributed to the limited nature of the provisions in Section 13 of the Payment of Gratuity Act, 1972. In my opinion, a possible solution would be to include a new provision in Section 13 of the Payment of Gratuity Act, similar to the provisions of sub-section (2) of Section 3 of the Provident Funds Act, 1925 which specifically exempts from attachment the P.F. amount of a subscriber in the event of his death and it is payable to his dependants. Therefore, suitable amendment to the provisions of the Payment of Gratuity Act is called for.

Judgements Section

Recent Judgements Relevant to Bankers

Joseph Raj
Asst. Legal Adviser

I. State Bank of India vs. EK. Andrew & Another (JT 2001(3) SC 612)

Banking Regulation Act, 1949 - Deputy General Manager of erstwhile Bank of Cochin -Appointed as Chairman for fixed tenure but removed from the post - Amalgamation of bank with State Bank of India - claim of employee to hold the post of Deputy General Manager under State Bank of India - held that he was entitled to the post as he was appointed Chairman for fixed tenure. There was no automatic cessation of service of the post of Deputy General Manager.

Facts

The respondent was a permanent employee under the Bank of Cochin and was serving as a Deputy General Manager. While so continuing he was appointed as Chairman by virtue of a resolution of the Bank of Cochin on 18-6-1979 and that appointment was approved by the Reserve Bank of India as required under the Banking Regulation Act, 1949. The initial period of appointment as Chairman was two years but the same was extended for a further period of 3 years with effect from 12-3-1981 and thus it continued till 17-6-1984. However, while continuing in his capacity as chairman of Bank of Cochin a set of charges were brought against him and proceedings were initiated by Reserve Bank of India. Ultimately by order dated 2-4-1983, he was removed from the post of Chairman. Thereafter, the Bank of Cochin was amalgamated with the State Bank of India with effect from 9-8-1985.

The respondent approached the High Court with a prayer that he is entitled to be held an employee of the Bank of Cochin on the date the Bank stood amalgamated with the State Bank of India and therefore he is entitled to be posted against the post of Deputy General Manager under the State Bank of India. The High Court came to the conclusion that the respondent must be held to be a permanent employee of Bank of Cochin and had a substantive right against that post notwithstanding his appointment as Chairman for a fixed period. The Division Bench upheld the conclusion and the decision of the single judge and dismissed the appeal filed by the Bank. Being aggrieved by the order of the Division Bench, the appellant had filed this appeal.

It was argued' on behalf of the appellant that the very fact that the respondent was appointed as Chairman with the approval of the Reserve Bank of India ipso facto would indicate that he did not retain any lien against his substantive post of Deputy General Manager and therefore the High Court erred in law in issuing the impugned direction. In support of his contention the counsel has relied on a decision in the case of **Dr.S.K. Kacker V. All India Institute of Medical Sciences and Others [JT 1996 (8) SC 513]**. However, the Court observed that the decision in the above case will have no application to the present case where neither the order of appointment as Chairman, nor the provisions of the Banking Regulation Act, nor any rule of the Bank of Cochin holds that there is an automatic cessation from the substantive post of the employee the moment he is appointed as Chairman though for a fixed tenure. Further, it was argued on behalf of the appellant that even under the scheme of amalgamation, the respondent

would not be entitled to get the job in question as it would depend upon the very scheme itself. However, the court did not accept this contention as it does not appear to have been urged either before the single judge or before the Division Bench.

Decision

The appeal was accordingly dismissed.

II. Rajneesh Aggarwal vs. Amit Bhalla (AIR 2000 SC 518)

Negotiable Instruments Act, 1881; Sections; 138 and 141-Dishonour of cheque - Notice to drawer for payment - cheque in question issued by company through its Director -Notice for payment issued in the name of Director who had signed the cheque is notice to drawer company - Notice cannot be construed in narrow technical way - offence of dishonour of cheque - Deposit by accused drawer of entire amount covered by cheque during trial - Does not absolve the accused drawer of the liability of offence - Deposit can have some effect of sentence to be awarded. Criminal Procedure Code, 1972 -Section 482.

Facts

Three cheques were given to the appellant drawn on Bank of Baroda, Parliament Street, New Delhi for different amounts, amounting to Rs. 2,32,600/- in all. The cheques were returned when presented for encashment with the endorsement "payment stopped by the drawer". The trial court proceeded to hold enquiry under Section 202 of CrPC and thereafter took cognizance of the offence and directed issuance of process. The accused/respondent challenged the order by filing application under section 482 of the CrPC, *inter alia*, on the ground that the stoppage of payment by the drawer does not constitute an offence under section 138 of the N.I. Act, 1882. The petition was dismissed by the High Court. Thereafter the accused/respondent filed an application before the trial court for recalling the issuance of process which was also dismissed. The accused/respondent again filed an application under section 482 of the CrPC before the High Court, which was allowed. The complaint has preferred the present appeal against the said order.

Observations of the Court

Mere dishonour of a cheque would not give rise to a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. The object of issuing notice indicating the factum of dishonour of the cheque is to give an opportunity to the drawer to make payment within 15 days, so that it will not be necessary for the payee to proceed against the drawer in any criminal action, even though the bank dishonoured the cheque. As the director of the company had signed the cheques, it was incumbent upon him to see that the payments were made within the stipulated period of 15 days. There is no dispute that he was not the Director of the company and he had not signed the cheques. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence. Once the offence of dishonour of cheque is committed and payment

made subsequent thereto will not absolve the accused of the liability of criminal offence. A criminal proceeding could not be quashed on account of deposit of money in the court.

Decision

The Court set aside the impugned order passed by the High Court and directed that criminal proceedings be continued. The money which was deposited by the accused in the court may be refunded to the accused through his counsel. The Magistrate was directed to dispose of the proceedings at an early date.

III. Punjab Co-operative Bank Ltd. and Another - vs. Union of India and Others (AIR 2001 P & H)

Banking Regulation Act, 1949 Section 45(2) - Imposition of moratorium and preparation of draft scheme by Reserve Bank of India for amalgamation of bank in question with another bank- Writ Petition, against - Objections against orders also filed before Reserve Bank of India - Dismissal of - Special leave Petition also dismissed with the observation that bank would be entitled for post decisional hearing - Subsequent order of amalgamation of bank passed by Central Govt. - Objection filed as aforesaid considered by Central Govt. - No violation of principles of natural justice on the ground of absence of giving fresh hearing to bank - Constitution of India Art 14.

Facts

On 30-9-96 the Ministry of Finance, Dept. of Economic Affairs (BD) of the GOI imposed moratorium on the Punjab Co-operative Bank Ltd. and the Bari Doab Bank Ltd. from transacting any business for a period of 3 months, which was subsequently extended for another 3 months. On 7th April, 1997 the GOI rejected the objections filed by the two banks against the imposition of moratorium and the scheme of merger etc. By another notification, the Central Govt. sanctioned the scheme put up by the Reserve Bank of India for amalgamation of the two banks. The Bari Doab Bank Ltd. had challenged the orders of moratorium passed by the GOI as also the two notifications. The Writ Petition was dismissed. The Special leave Petition filed by Bari Doab Bank Ltd. was also dismissed. However, the Punjab Co-operative Bank Ltd. through its Director Shri Shiraj Raj as also Shri Shiraj Raj in his capacity as director of the Bank filed this petition under Article 226 of the Constitution of India.

Observations of the Court

The short question which falls for consideration is - Have the respondents acted in violation of the principles of natural justice?

The Petitioner bank and Bari Doab Bank are placed in an indetical situation. The orders passed in case of both the bankers are one. The decision in one of the two cases has already been affirmed by the Supreme Court by dismissing the SLP. In view of this, it appears to be no infirmity in the order passed by the Division Bench in the Writ Petition.. Hence, the action in the

present case also is not violative of the principles of Natural Justice. The petitioners were afforded a due and reasonable opportunity.

Decision

Petition dismissed accordingly

IV. Satish Kumar Sharma vs. Bar Council of Himachal Pradesh (AIR 2001 SC 509)

Advocates Act, 1961 - Sections 24, 28 & 49 - Bar Council of India Rules, 1975-Rule 49 -Law Officer Enrolled as an Advocate despite being full time salaried employee - His work was not mainly or exclusively to act or plead in court as Law Officer- Cancellation or Withdrawal of enrolment - Action, not on ground of misconduct by initiating disciplinary proceedings - But on grounds that very enrolment as an Advocate was contrary to law - Cancellation or withdrawal of enrolment therefore does not tantamount to punishment - But rectification of mistake - Nature of duties and work of prosecutors and Government pleaders particularly in relation to acting and pleading in court is different from permanent employment.

The appellant, a law graduate was appointed as Law Officer by the Himachal Pradesh State Electricity Boarding in 1978. In 1984, the Respondent issued a certificate of enrolment to him. However, in 1993 the respondent called upon the appellant to appear before the committee alongwith all connected documents. Thereafter a show cause notice was issued to the appellant requiring him to explain as to why the enrolment issued to him be not withdrawn. Finally in the meeting held on 12-5-1996, the respondent passed a resolution unanimously withdrawing the enrolment of the appellant with immediate effect and directed him to surrender the enrolment certificate and under Rule 49 of the Bar Council of India Rules, 1975. He was also debarred to be an Advocate. It was contended that the respondent had no jurisdiction to withdraw the enrolment certificate granted to the appellant.

Observations of the Court

The main and opening para of Rule 49 of the Bar Council of India Rules, 1975 prohibits an Advocate from being a full time salaried employee of any person, Government, firm, Corporation or concern so long as he continues to practice and an obligation is cast on an Advocate who takes up any such employment to intimate the fact to the concerned bar council and he shall cease to practice so long as he continues in such employment. The bar created under para 1 of Rule 49 will not be applicable to Law Officers of the Central Government, State Government, any public corporation or body constituted under a statute if they are given entitlement under the Rules of their respective State Bar Council.

No rules were framed by the respondent entitling a law officer appointed as a full time salaried employee coming within the meaning of para 3 of Rule 49 to enroll as an Advocate. Such an enrolment has to come from the Rules made under Section 28(2)(d) read with Section 24(1) (e) of the Act. Hence, if there is no rule in this regard, there is no entitlement. In the absence of an express or positive rule, the appellant could not fit in the exception. If he is not acting or pleading

on behalf of his employer, then he ceases to be an Advocate. If the terms of engagement are such that he does not have to act or plead but does other kinds of work, then he becomes a mere employee of the Government or Body Corporate. The expression 'Advocate' is one who actually practices before the courts which expression would include even those who are law officers appointed as such by the Government or Body Corporates. Unless a concerned State Bank Council has framed rules entitling law officers to enroll as an Advocate even though they are full time employees, they are not entitled to enrolment. In the light of the facts of the case, the enrolment of the appellant is contrary to Rule 49 of the Bar Council of India Rules, 1975 and he is not at all entitled for enrolment. The duties, nature of work and service conditions of the appellant are substantially different from the duties and nature of work of prosecutors and Government Pleaders particularly in relation to acting and pleading in Court. Thus, the appellant stood on a different footing.

Decision

The appeal is dismissed accordingly.

Kshetriya Kisan Gramin Bank vs. D.B. Sharma and Others (2001) ISCC 353

Labour Law - Pay Parity in Regional Rural Bank sponsored by U.P. Cooperative Bank Ltd. - Type of parity in pay for officers and employees accepted by National Industrial Tribunal in its award dated 30-4-1988 - NIT applied the principle of parity with the officers of the sponsor bank concerned and not the principle of equal pay for equal work - Recommendation of Equation Committee appointed by Central Government for equating them with officers of the sponsor bank concerned i.e. U.P. Cooperative Bank and not with the employees of nationalised banks or commercial banks, is valid and consistent with NIT's direction. Concepts of 'Parity with others' and 'equal pay for equal work' are different - Recommendation of equation committee for parity of pay of employees of Regional Rural Banks with the pay of employees of sponsor banks concerned and not with the sponsor banks of other rural banks is constitutional.

Facts

The appellant is a Regional Rural Bank, established u/s 3 of the Regional Rural Banks Act, 1976 and sponsored by the U.P. Cooperative Bank Ltd., Lucknow which is a society registered under the U.P. Cooperative Societies Act. Out of the 196 Regional Rural Banks in the country, 195 banks are sponsored by the nationalised banks and it is only the appellant bank which is sponsored by the U.P. Cooperative Bank. The employees of the Regional Rural Bank filed writ petitions seeking parity in respect of pay, salary allowances and other benefits with the employees of the nationalised banks in corresponding or comparable posts. The writ petitions were disposed of as the Central Government agreed to appoint a National Industrial Tribunal to decide the question. The Tribunal opined that it is a matter which has to be decided by the Central Government in consultation with such authorities as it may consider necessary. In view of the observations of the Tribunal the Government of India constituted a committee called the Equation Committee and referred the award to the committee seeking for a report in the matter of equation. On the basis of the recommendations of the committee, the Central Government, in

exercise of the powers under the second proviso to section 17(i) of the Regional Rural Banks Act, 1976 issued certain directions whereunder the Branch Manager's post has been equated to the post of Asstt. Manager of U.P. Cooperative Bank Ltd. and the scale of pay for the latter post was also made applicable to the former post. The High court of Allahabad set aside the said direction and held that the employees of the appellant Bank would be entitled to the scale of pay of the employees of nationalised banks. Further, it was held that the decision of the Equation Committee was contrary to the decision of the Supreme Court relating to the principle of 'equal pay for equal work' as also discriminatory. Against the said order, the Kshetriya Kisan Gramin Bank filed the appeal before the Supreme Court.

Observations of the Court

The High Court passed the impugned judgement without properly applying its mind to the relevant conclusions of the Tribunal as well as the very basis on which the Equation Committee discharged its obligation of doing the job of equation and erroneously, came to the conclusion that since the nature of job performed by the employees of the appellant Bank is not dissimilar to that being performed by those sponsored by commercial or nationalised banks, a difference of pay scales and other benefits would tantamount to discrimination. The aforesaid conclusion is wholly misconceived and in utter disregard of the finding of the Tribunal as well as the Principles of Act 14 of the Constitution.

The concept "equal pay for equal work" and the concept of "claim of parity with some others" are two different concepts and the conclusions of the High Court having been based on a misreading of the findings of the Tribunal, the said conclusion is vitiated and must be set aside. The conclusion of the High Court that the Equation Committee erroneously equated the Branch Managers of the appellant Bank with the Asstt. Managers of other banks is also a conclusion not based upon any rational basis and High Court was fully in error in applying the pay structure of the Regional Rural Banks sponsored by the nationalised banks to the pay structure of the appellant bank which was sponsored by UP Cooperative Bank.

Decision

The judgement of the Allahabad High Court is set aside and the appeal is allowed. The employees of the appellant bank would get their pay structured as per the report of the Equation Committee which was duly accepted by the Government.

Legislation Section
Financial Companies Regulation Bill, 2000*
[196 of 2000]

A Bill to consolidate and amend the law for regulation of financial institutions, to protect the interests of the depositors of the financial companies and to prohibit acceptance of deposits by unincorporated bodies and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

Short title, extend and commencement

1. (1) This Act may be called the Financial Companies Regulation Act, 2000.

(2) It extends to the whole of India.

(3) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

2. (1) In this Act, unless the context otherwise requires,

(a) "Advisory Council" means the Advisory Council for Financial Institutions constituted under sub-section (1) of section 3;

(b) "approved securities" means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Governments;

(c) "Bank" means the Reserve Bank of India, constituted by the Reserve Bank of India Act, 1934 (2 of 1934);

(d) "Board" means the Board of Company Law Administration constituted under sub-section (1) of section 10 E of the Companies Act, 1956 (1 of 1956);

(e) "business of financial institution" means,

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than of its own;

(ii) the acquisition of shares, stocks, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;

(iii) the letting or delivering of any goods to a hirer under a hire-purchase finance agreement or to a lessee under a financial lease agreement;

- (iv) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or any business similar thereto;
 - (v) receiving deposits from or providing loans or advances against securities to its shareholders;
 - (vi) receiving public deposit under any scheme or arrangements or in any other manners;
 - (vii) such other business or class of business as the Bank may, with the previous approval of the Central Government, by notification, specify;
- (f) "chit" means a chit as defined in clause (b) of section 2 of the Chit Funds Act, 1982 (40 of 1982);
- (g) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes a foreign company within the meaning of section 591 of that Act;
- (h) "corporation" means a corporation incorporated by an Act of any legislature;
- (i) "deposit" includes and shall be deemed always to have included, any receipt of money by way of deposit or loan or in any other form, but does not include.-
- (i) amounts raised by way of share capital;
 - (ii) amounts contributed as capital by partners of a firm;
 - (iii) amounts received from-
 - (A) a banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 1949) or a corresponding new bank as defined in clause (*da*) of section 5 of that Act or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or a Regional Rural Bank as defined in the Regional Rural Banks Act, 1976 (21 of 1976);
 - (B) a co-operative bank as defined in clause (*cci*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - (C) a corporation or a company or a cooperative society registered under an Act of any legislature;
 - (D) the Central Government or a State Government or a local authority;
 - (E) any other source whose repayment is guaranteed by the Central Government or a State Government;

- (F) a foreign Government or a foreign authority;
 - (G) the Asian Development Bank; being a Bank referred to in the Asian Development Bank Act, 1966 (18 of 1966); or International Finance Corporation being a corporation referred to in the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958); or
 - (H) any other institution that may be specified by the Bank in this behalf;
- (iv) the amounts received in the ordinary course of business, by way of -
- (A) security deposit,
 - (B) dealership deposit,
 - (C) earnest money, or
 - (D) advance against order for specific goods, properties or services;
- (v) any amount received from an individual or a firm or an association of individuals, not being a body corporate, registered under any enactment relating to money lending which is, for the time being, in force in any State;
- (vi) any money received against mortgage of immovable property, or against pledge of specific movable property, where the value of such security is not less than the money received; and
- (vii) any amount received by way of subscription in respect of a chit.

Explanation.- Any credit given by a seller to a buyer on the sale of any property, whether movable or immovable, shall not be deemed to be deposit for the purpose of this clause;

- (j) "depositor" means a person who has made a deposit and includes his heirs, legal representatives and assignee;
- (k) "Financial company" means a financial institution which is company;
- (l) "financial institution" means a non-banking institution which is carrying on as its principal business the business of financial institution
- (m) "High Court", in relation to a financial company means the High Court, exercising jurisdiction in the place where the registered office of the financial company is situated or, in the case of financial company incorporated out side India, where its principle place of business in India is situated;
- (n) "net owned fund" means-

(A) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the financial company after deducting therefrom-

- (i) accumulated balance of loss;
- (ii) deferred revenue expenditure;
- (iii) other intangible assets; and

(B) further reduced by the amounts representing-

(1) investments of such company in shares of-

- (i) its subsidiaries or holding company;
- (ii) companies in the same group;
- (iii) all other financial companies; and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire purchase and lease finance) made to, and deposits with,-

- (i) subsidiaries or holding company of such company; and
- (ii) companies in the same group,

to the extent such amount exceeds ten percent of (A) above;

(o) "non-banking institution" means a company, a corporation or a co-operative society;

(p) "notification" means a notification published in the Official Gazette;

(q) "owned fund" means the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom-

- (i) accumulated loss;
- (ii) deferred revenue expenditure; and
- (iii) other intangible assets;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "public deposit" means the deposit as defined in clause (i) but does not include-

- (i) any amount received from a relative of a director of the financial company;
- (ii) any amount received by way of subscription, to any shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the articles of association of the financial company and, retained up to a period not exceeding one hundred and eighty days;
- (iii) any amount received from a foreign citizen or a foreign institution;
- (iv) any amount received from any other source which may be specified by the Bank in this behalf;

- (t) "record" includes the records maintained, in the form of books or stored in a computer, or in such other form as may be specified by the Bank from time to time;
 - (u) "Recovery Officer" means a Recovery Officer appointed by the Board under sub-section (18) of section 24;
 - (v) "regulations" means the regulations made by the Bank under this Act;
 - (w) "unencumbered approved securities" includes the approved securities lodged by a financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner.
- (2) Words and expressions used but not defined in this Act but defined in the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulation Act, 1949 (10 of 1949) or the Companies Act, 1956 (1 of 1956) or the National Housing Bank Act, 1987 (53 of 1987) shall have the same meaning assigned to them in those Acts.

CHAPTER II

ADVISORY COUNCIL

Constitution of Advisory Council

3. (1) The Bank may, by notification constitute a Council to be known as the Advisory Council for Financial Institutions.
- (2) The Advisory Council shall consist of the following members, namely:-
- (a) a Deputy Governor of the Bank to be nominated by the Governor - Chairperson;
 - (b) such number of members not exceeding three to be nominated by the Bank from amongst the persons having special knowledge of banking, law, accountancy, business management, transport sector, investment, marketing or conduct of business of financial institutions;
 - (c) not more than four members to be nominated by the Bank from amongst the representatives of associations of financial institutions, depositors' associations, if any, and any other person having special knowledge of, and the professional experience in, the area which, in the opinion of the Bank, would be useful to the Bank in administration of the provisions of this Act;
 - (d) the Chief General Manager-in-Charge of the department in the Bank administering the provisions of this Act-ex officio member.

(3) The term of office of the Chairperson and member ex officio of the Advisory Council shall be co-terminus with their term as the Deputy Governor or the Chief General Manager, as the case may be.

(4) The members of the Advisory Council nominated under clauses (b) and (c) of sub-section (2) shall hold office for such term not exceeding five years as the Bank may specify:

Provided that a member shall be eligible for renomination.

(5) The Advisory Council shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(6) The Chairperson or, if for any reason, he is unable to attend the meeting of the Council, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(7) All questions which come up before any meeting of the Advisory Council shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a casting vote.

(8) The fee and allowances to be made to the members referred to in clauses (b) and (c) of subsection (2) and the manner of filling up of vacancy and the procedure to be followed in discharge of their functions shall be such as may be specified by regulations.

Functions of Advisory Council

4. (1) The functions of the Advisory Council shall be to advise the Bank on any matter under the Act or arising therefore which may be referred to it by the Bank.

(2) Without prejudice to the provisions contained in sub-section (1), the Advisory Council shall examine any matter referred to in that sub-section and make recommendations thereon within such period as may be specified by regulations.

(3) The recommendations of the Advisory Council shall not be binding on the Bank.

Disqualifications for nomination of members of Advisory Council

5. No person shall be eligible to be nominated under clause (b) or clause (c) of sub-section (2) of section 3, if he-

(a) is, or any time has been, adjudged as an involvently; or

(b) has made a default in making a payment to his creditors; or

(c) has become physically or mentally incapable of acting as a member; or

- (d) is, or at any time has been, a director or an employee of a financial company against which an order prohibiting such company from accepting public deposit had been issued by the Bank; or
- (e) has been at any time convicted for an offence under this Act; or
- (f) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (g) has in the opinion of the Bank so abused his position as to render his continuation in office detrimental to the public interest.

CHAPTER III

REGULATION OF FINANCIAL INSTITUTIONS

Registration of financial companies

6. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, no financial company shall commence or carry on the business of a financial institution without obtaining a certificate of registration issued under this section:

Provided that a non-banking financial company which had obtained a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, shall be deemed to have obtained the certificate of registration under this section;

Provided further that no financial company shall receive public deposit unless such company has been authorised by the Bank and such authorisation is recorded by the Bank in its certificate of registration:

Provided also that a non-banking financial company which -

(a) had been issued a certificate of registration in accordance with the provisions of section 45IA of the Reserve Bank of India Act, 1934(2 of 1934) as it stood immediately before the commencement of this Act; and

(b) was entitled to receive or hold public deposit under that Act or directions given thereunder,

shall be deemed to have obtained the certificate of registration under this section may continue to receive or hold public deposits:

Provided also that a non-banking financial company which had obtained a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, and was entitled

to receive or hold public deposit in accordance with the provisions of said Act or directions given thereunder shall within six months from the date of commencement of this section, surrender to the Bank the certificate of registration and obtain a certificate of registration authorising to receive or hold public deposit.

(2) Every financial company shall make an application for registration to the Bank in such form as the Bank may specify:

Provided that a non-banking financial company, which had made an application for registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) as it stood immediately before the commencement of this Act, but which has not been issued a certificate of registration under that Act, before commencement of this Act, shall be deemed to have made an application under this section and may continue to carry on the business of financial institutions and if it was entitled to receive or hold public deposit under that Act or directions given thereunder it may continue to receive, hold and refund public deposits in accordance with the provisions of this Act or directions given thereunder until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) The Bank may, for the purpose of considering the application for registration and authorising a financial company to receive public deposit require to be satisfied by an inspection of the records and books of the financial company or otherwise that the following conditions are fulfilled. -

- (a) that the financial company is or shall be in a position to pay its depositors in full as and when their claims accrue;
- (b) that the affairs of the financial company are not being or are not likely to be conducted in a manner detrimental to the interests of its depositors;
- (c) that the general character of the management or the proposed management of the financial company shall not be prejudicial to the public interest or the interests of its depositors;
- (d) that the financial company has adequate capital structure and earning prospectus;
- (e) that the public interest shall be served by the grant of certificate of registration or authorisation for receiving public deposits to the financial company to commence or carry on the business of financial institution in India;
- (f) that the grant of certificate of registration or authorisation for receiving public deposits shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, operation of credit system and economic growth and considering such other relevant factors which the Bank may specify;
- (g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that acceptance of public deposits in India by a financial company shall not be prejudicial to the public interest or to the interests of the depositors.

(4) The Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration or authorise a financial company to receive public deposits; subject to such conditions, which it may consider, fit to impose.

(5) Every financial company shall obtain prior approval of the Bank for any substantial change in its management, change in location of its registered office or change in its name

Provided that decision of the Bank, whether the change in management of a financial company is a substantial change in its management or not, shall be final.

For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

(6) The Bank may cancel a certificate of registration granted to a financial company or revoke the authorisation given under the second proviso to sub-section (1) if such company -

(a) ceases to carry on its business of financial institutions; or

(b) ceases to receive or hold public deposit; or

(c) has failed to comply with any condition subject to which the certificate of registration or authorisation to receive public deposits has been issued to it; or

(d) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3); or

(e) fails to, -

(i) comply with any direction issued by the Bank under the provisions of this Act; or

(ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Act; or

(iii) submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(iv) obtain prior approval of the Bank required under sub-section (5);

(f) has been prohibited from receiving deposit by an order made by the Bank under the provisions of this Act or was prohibited under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934) and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration or revocation of authorisation of receiving public deposits on the ground that the financial company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) of sub-clause (iv) of clause (e), the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration or revocation of authorisation of receiving public deposits shall be prejudicial to public interest or the interests of the depositors or the financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such condition

Provided further that before making any order of cancellation of certificate of registration, or revocation of authorisation of receiving public deposits such company shall be given a reasonable opportunity of being heard.

(7) A financial company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration or revocation of authorisation of receiving public deposits may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation or revocation of authorisation of receiving public deposits is communicated to it, to the Central Government:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

(8) A financial company, which is holding public deposits and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled or authorisation of receiving public deposits has been revoked shall, notwithstanding the rejection of its application for grant of certificate of registration or cancellation of certificate of registration, revocation of authorisation of receiving public deposits be deemed to be a financial company until it repays entire public deposit held by it.

(9) Any branch or office in India of a company referred to in section 591 of the Companies Act, 1956 (1 of 1956), accepting public deposit in India, shall be a financial company for the purposes of this Act.

Requirement of Net Owned Fund

7. (1) No financial company shall be authorised to receive or hold public deposits under the second proviso to sub-section (1) of section 6 without -

- (a) obtaining a certificate of registration issued under sub-section (2) of section 6; and
- (b) having the net owned fund of not less than two hundred lakhs of rupees or such other amount not exceeding ten crores of rupees as the Bank may, by notification, specify:

Provided that the net owned fund held by a non-banking financial company, which -

(a) had been issued a certificate of registration in accordance with the provisions of section 45IA of the Reserve Bank of India Act, 1934 (2 of 1934) as it stood immediately before the commencement of this Act; and

(b) was entitled to receive public deposit,

shall be deemed to be the net owned fund required under this Act

Provided further that the net owned fund held by a non-banking financial company, in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, which made an application for registration in accordance with the provisions of that section but has not been granted a certificate of registration before the commencement of the this Act, shall be deemed to be the net owned fund required under this Act:

Provided also that a non-banking financial company, referred to in the first proviso and the second proviso having net owned fund of less than two hundred lakhs of rupees before the commencement of this Act, shall increase its net owned fund to such sums and within such time as may be specified by the Bank in this behalf.

(2) No financial company shall commence or carry on the business of a financial institution without -

(a) obtaining a certificate of registration under sub-section (2) of section 6; and

(b) having the owned fund of not less than twenty five lakhs of rupees or such other amount not exceeding two crores of rupees, as the Bank may, by notification, specify:

Provided that the net owned fund held, by a non-banking financial company, which has been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) shall be deemed to be the owned fund required under this sub-section:

Provided further that every non-banking financial company which made an application for registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, but has not been granted a certificate of registration before the commencement of this Act, owned fund in accordance with the provisions of sub section (2)

Provided also that a non-banking financial company, referred to in the first proviso or the second proviso having owned fund of less than twenty five lakhs of rupees before the commencement of this Act, shall increase its owned fund to such sums and within such time as may be specified by the Bank in this behalf under clause (6) of subsection (2).

(3) The Bank may, by notification, specify, different amount of minimum net owned fund or owned fund, as the case may be, for different class or classes of financial companies.

Maintenance of Assets

8. (1) Every financial company, which receives or holds public deposits, shall invest and continue to invest in India, -

- (a) in unencumbered term deposit with a scheduled bank, other than a co-operative bank or a regional rural bank; or
- (b) in encumbered approved securities valued at a price not exceeding the current market price of such securities,

an amount, which at the close of business on any day, shall not be less than such percentage not exceeding twenty-five per cent as the Bank may, from time to time, by notification, specify, of the public deposits outstanding at the close of business on the last working day of the preceding month:

Provided that such investment in unencumbered term deposit shall not exceed five per cent or such per cent as the Bank may, by notification, specify from time to time.

Provided further that the Bank may, by notification, specify different percentages of investment in respect of different classes of financial companies.

Explanation.- For the purposes of this section, the "public deposits" and "term deposit" shall include the amount of interest accrued on such deposits.

(2) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every such financial company to furnish a return to it in such form, in such manner and for such period, as may be specified by the Bank.

(3) If the amount invested by a financial company at the close of business on any day falls below the rate specified under sub-section (1) such company shall be liable to pay to the Bank, in respect of such shortfall, a penal interest at a rate of three per cent per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent month, the rate of penal interest shall be five per cent per annum above the bank rate on such shortfall for each subsequent month.

(4) (a) The penal interest under sub-section (3) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding payment of the same is served on the financial company and, in the event of failure of the financial company to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting financial company is situated and such direction shall be made only upon a application made in this behalf to the court by the Bank.

(b) When the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the financial company and every such certificate shall be enforceable in the same manner, as if, it were a decree made by the said court, in a suit.

(5) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting financial company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

Reserve Fund

9. (1) Every financial company, which has received or receives public deposit, shall create a reserve fund and transfer therein a sum, not less than twenty per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

(2) No appropriation of any sum from the reserve fund shall be made by the financial company except for the purpose, as may be specified by the Bank from time to time, and every such appropriation shall be reported to the Bank within twenty-one days from the date of such appropriation

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in subsection (1), the Bank may, having regard to the adequacy of the paid-up capital and reserves of a financial company in relation to its liabilities to repay the public deposit, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the financial company for such period and so such extent, as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under subsection (1) is not less than the paid-up capital of the financial company.

(4) The Bank may, in the public interest or in the interest of the depositors, direct any such financial company or any class of financial companies to invest a part of such reserve fund not exceeding twenty-five per cent of such fund in any specified unencumbered securities.

First charge over assets in favour of Depositors.

10. In the event of a financial company making any default in repayment of public deposit, all the depositors, who made such public deposits, shall have a first charge over the assets maintained under section 8 and the specified unencumbered securities referred to in subsection (4) of section 9.

Regulation of Advertisement Soliciting Deposit

11. The Bank may, if it considers necessary in the public interest so to do, by general or special order, -

- (a) regulate or prohibit the issue by any non-banking institution, or in its name or on its behalf, of any prospectus or advertisement soliciting deposit; and
- (b) specify, by notification, the conditions subject to which, any such prospectus or advertisement, if not prohibited, may be issued.

Power to call for Information

12. (1) The Bank may, at any time, call for, from a financial institution or a class of financial institutions, any statement, information and particulars relating to conduct of business of the financial institution or the class of financial institutions in such form, at such intervals and within such time, as may be specified by the Bank by general or special order.

(2) Without prejudice to the generality of the powers vested in the Bank under sub-section (1), the statements, information or particulars to be furnished under that sub-section, may relate to all or any of the following matters, namely:-

- (a) the amount of the deposits;
- (b) the purposes and periods for which such deposits may be accepted;
- (c) the rate of interest on such deposits;
- (d) the other terms and conditions for acceptance of such deposits;
- (e) the paid-up capital, reserves or other liabilities;
- (f) the investments, whether in Government securities or otherwise;
- (g) the persons to whom, and the purposes and periods for which, finance is provided;
- (h) the terms and conditions, including the rate of interest, on such finance is provided;
- (i) the items of income and expenditure.

(3) The Bank may call for, at any time from a non-banking institution or a class of non-banking institutions any statement, information and particulars relating to conduct of business of the nonbanking institution or the class of non-banking institutions in such form and within such time, as may be specified by the Bank by general or special order, for the purpose of ascertaining as to whether it is carrying on any business of a financial institution or for ascertaining whether prospectus or the advertisement soliciting deposit issued, if any, by it or in its name or on its behalf, is in public interest or in the interests of the depositors or in the interest of the credit system of the country or for any matters relating thereto.

(4) It shall be the duty of every financial institution and non-banking institution to furnish the statements, information and particulars called for, and to comply with any order issued under this section to it in this behalf.

Power to determine policy

13. (1) If the Bank is satisfied that, in the public interest or to regulate the credit system of the country to its advantage or, to prevent the affairs of any financial institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the financial institution, it is necessary or expedient so to do, it may determine the policy on any matter relating to or connected with the conduct of business of financial institution.

(2) Without prejudice to the generality of the powers vested in the Bank under sub-section (1), the policy may be related to or connected with receipt of deposit, including the rate of interest payable on such deposit, the period for which such deposits may be received and the manner of receipt of such deposit, income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance sheet items and also any of the matters referred to in sub-section (2) of section 12 including those relating to deployment of funds by a financial institution or a class of financial institutions generally, as the case may be and financial institutions shall be bound to follow the policy so determined.

Power to issue directions to financial institutions

14. (1) If the Bank is satisfied that, in the public interest or to regulate the credit system of the country to its advantage or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the financial institution, it is necessary or expedient so to do, it may, at any time, issue directions to a financial institution or a class of financial institutions in respect of any matters relating to or connected with the conduct of business of financial institution.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions relating to -

- (a) any matter connected with receipt of deposit, including the rate of interest payable on such deposit, the period for which such deposits may be received and the manner of receipt of such deposit;
- (b) purpose for which advances or other fund based or non-fund based accommodation may not be made;
- (c) maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the financial institution and other relevant considerations, which may be made by that financial institution to any person or a group of persons or a company or group of companies;

(d) any matter of policy referred to in section 13 or any matter relating thereto or connected therewith.

(3) Every financial institution shall, if so required by the Bank and within such time as the Bank may specify, cause to be sent at the cost of the financial institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts or any other information to every person from whom the financial institution holds, as on the last day of the year to which the accounts relate, public deposit higher than such sum as may be specified by the Bank.

(4) It shall be the duty of every financial institution to comply with any direction give to it under this section.

Power to issue directions to auditors and duties of auditors

15. (1) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interests of the depositors or for the purpose of proper assessment of the records and books of account of a financial institution or a class of financial institutions, -

(a) issue directions to the auditor of a financial institution or class of financial institutions on any matter relating to balance-sheet, profit and loss account, disclosure of liabilities in the records and books of account;

(b) direct a financial company or class of financial companies to appoint auditor with the prior approval of the Bank for such period and subject such conditions as the Bank may specify;

(c) appoint an auditor or auditors to conduct special audit of the accounts of a financial company in relation to any such transaction or class of transactions or such period, as may be specified in the order, and direct the auditor of the auditors to submit the report to it.

(2) The remuneration of the special auditors, as may be fixed by the Bank, having regard to the nature and volume of work involved in such audit and the expenses of or incidental to such audit, shall be borne by the financial company so audited.

(3) It shall be the duty of an auditor of a financial institution to inquire whether or not the financial institution has furnished to the Bank such statements, information or particulars as are required to be furnished under this Act and the auditor shall, except where he is satisfied on such inquiry that the financial institution has furnished such statements, information or particulars and complied with all the directions and orders issued by the Bank under this Act, make a report to it giving details of such defaults.

(4) Where, in the case of a financial company, the auditor has made, or intends to make, a report to the Bank under sub-section (3), he shall include in his report under sub-section (2) of section 227 of the Companies Act, 1956 (1 of 1956), the contents of the report which he has made, or intends to make to the Bank.

Power to prohibit acceptance of deposit

16. If any financial company violates any provisions of this Act or fails to comply with any direction given or order issued by the Bank under this Act, the Bank may prohibit the financial company from accepting any deposit.

Power to prohibit alienation of assets

17. (1) The Bank may, on being satisfied that it is necessary so to do in the public interest or in the interests of the depositors, direct a financial company -

- (a) against which an order prohibiting it from accepting deposit has been issued; or
- (b) which has violated any provision of this Act or failed to comply with any direction given or order issued by the Bank under this Act,

not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets including the cash balance with it or the credit balance in its bank account; or not to increase the remuneration or honorarium or any benefit payable or extendable to its directors, advisors, consultants or employees or any person; or not to appoint any such personnel except for protection of its legal rights, properties and assets, without prior written permission of the Bank, for such period not exceeding one year from the date of the direction:

Provided that the Bank may after recording the reasons extend the said period from time to time:

Provided further that the period under this subsection shall in no case exceed five years in the aggregate.

(2) Notwithstanding anything contained in any law for the time being in force, any alienation, of property or assets referred to in sub-section (1) by way of sale, mortgage or otherwise, made in contravention of the direction under that subsection shall be void.

Power to appoint Special Officer

18. (1) If the Bank is of the opinion that -

- (a) the affairs of the financial company are being conducted in a manner prejudicial to the public interest or in any manner detrimental to the interest of the financial company or its depositors; or
- (b) any order or direction issued by the Bank to a financial company under this Act has not been complied with, it may appoint one or more persons as Special Officers to obtain the information regarding conduct and affairs of such company or to ensure compliance with the order or direction issued by the Bank for such period and on such terms and conditions as the Bank deems fit.

(2) In particular and without prejudice to the provisions contained in sub-section (1), the Special Officer may, -

- (a) call for any information connected with the affairs of the financial company and forward the same to the Bank;
- (b) Identify the financial transaction of such financial company which would require or required approval of the Bank;
- (c) consider the application of the company where approval of the Bank is required, if so authorised by the Bank in respect of such financial transactions;
- (d) approve, in consultation with the Bank, the mode of investment;
- (e) perform such other functions as may be specified by the Bank.

(3) It shall be the duty of every financial company referred to in sub-section (1) to afford the Special Officer necessary facility to check or verify cash, stocks, securities or such other valuable articles or things or records, books of account and furnish such other information relating to any matter which may be useful or relevant in discharge of this duties.

Inspection

19. (1) The Bank may, at any time, cause an inspection to be made by an inspecting authority consisting of one or more of its officers or employees or other persons (hereafter in this section referred to as the inspecting authority) -

- (a) of any financial institution, if the Bank considers it necessary or expedient to inspect that financial institution; or
- (b) of any non-banking institution for the purposes of verifying the correctness or completeness of any statement, information or particulars furnished to the Bank or for the purpose of obtaining any information or particulars which has not been furnished or for determining whether the non-banking institution is a financial institution.

(2) It shall be the duty of every director or member of any committee or other body for the time being vested with the management of the affairs of the financial institution or the non-banking institution, as the case may be, or other officer or employee thereof to produce before the inspecting authority all such records, books, accounts and other documents in his custody or power and to furnish to that authority with any statement and information relating to the business of the institution as the inspecting authority may require of him, within such time as may be specified by the inspecting authority.

(3) The inspecting authority may, examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the financial institution or

the non-banking institution or other officer or employee thereof, in relation to conduct of its business may administer an oath accordingly.

Certain financial companies not to carry on other business

20. No financial company, which has been granted a certificate of registration under sub-section (4) of section 6, shall carry on without prior approval of the Bank, any business other than the business of financial institution:

Provided that a financial company, or a non-banking financial company, which is carrying on any business other than the business of financial institution on or before the commencement of this Act, shall cease to carry on any such business within three years from the date of commencement of this Act.

Explanation. - For the purposes of this section, the business carried on by a financial company or a non-banking company shall not include the business carried on by its subsidiary.

Deposits not to be solicited by unauthorised person

21. No person shall solicit on behalf of any financial institution, either by publishing or causing to be published any prospectus or advertisement or in any other manner, deposits of money from the public unless -

- (a) he has been authorised in writing by the said financial institution to do so and specifies the name of the institution which has so authorised him, and
- (b) the prospectus. or advertisement complies with any order made or direction issued by the Bank under this Act or with the requirement of any other provisions of law for the time being in force, applicable to the publication of such prospectus or advertisement.

Disclosure of information prohibited

22. (1) any information relating to a financial institution, -

- (a) contained in any statement or return submitted by such institution under the provisions of this Act; or
- (b) obtained through audit or inspection or otherwise by the Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to -

- (a) the disclosure by any financial institution, with the previous permission of the Bank, of any information referred to in sub-section (1);

- (b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information referred to in sub-section (1) in such consolidated form, as it may think fit, without disclosing the name of any financial company or its borrowers;
- (c) The disclosure or publication by the financial institution or by the Bank of any such information to any other financial institution or its borrowers in accordance with the practice and usage customary amongst such financial institutions or as permitted or required under any other law

Provided that a financial institution shall not publish, except in accordance with the practice and usage customary amongst financial institutions or as permitted or required under any law, any information referred to in sub-section (1).

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Bank, if it is satisfied that, in the public interest or in the interests of the depositors or the financial institution or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interests of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any financial institution to any authority constituted under any law.

(4) Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Act.

CHAPTER IV

REDRESSAL OF DEPOSITORS' GRIEVANCES

Repayment of public deposit

23. Every public deposit accepted by a financial company shall, unless renewed, be repaid in accordance with the terms and conditions of such deposit.

Application to Board and functions of Boards

24. (1) Where a financial company has failed to repay any public deposit or part thereof to a depositor, in accordance with the terms and conditions of such deposit, the depositor may make an application to the Board.

(2) Every application under sub-section (1) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed.

Provided that the fee may be prescribed having regard to the amount of deposit due to be recovered.

(3) On receipt of the application under subsection (1), the Board shall issue summons requiring the financial company to show cause within twenty days of the service of summons as to why the relief prayed for should not be granted.

(4) The financial company shall, at or before the first hearing or within such time as the Board may permit, present a written statement of its defence.

(5) Where the financial company claims to set off against to set off against the depositors' demand and ascertained sum of money legally recoverable by him from such depositor, the financial company may, at the first hearing of the application, but not afterwards unless permitted by the Board, present a written statement containing the particulars of the debt sought to be set-off.

(6) The written statement shall have the same effect as a point in a cross-suit so as to enable the Board to pass a final order in respect of the original claim and of the set-off, if any.

(7) A financial company in an application may, in addition to its right of pleading a set-off under subsection (5), set up, by way of counter-claim, including its claim in the nature of damages, against the claim, of the depositor, any right or claim in respect of a cause of action accruing to the financial company against the depositor either before or after the filing of the application but before the financial company has delivered its defence or before the time for delivering its defence has expired.

(8) A counter-claim under sub-section (7) shall have the same effect as a cross-suit so as to enable the Board to pass a final order on the same application, both on the original claim and on the counter-claim.

(9) The depositor shall be at liberty to file a written statement in answer to the counter-claim of the financial company within such period as may be fixed by the Board.

(10) Where a financial company sets up a counterclaim and the depositor contends that the claim thereby raised ought not be disposed of by way of counter-claim but in an independent action, the depositor may, at any time before issues are settled in relation to the counter-claim, apply to the Board for an order that such counter-claim may be excluded, and the Board may, on the hearing of such application, make such order as it thinks fit.

(11) The Board may make an interim order, whether by way of injunction or stay or attachment, against the financial company to debar it from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to it without the prior permission of the Board.

(12) (A) Where, at any stage of the proceedings, the Board is satisfied, by affidavit or otherwise, that the financial company, with intent to obstruct or delay or frustrate the execution of any order for the recovery of unpaid public deposit that may be passed against it, -

(i) is about to dispose of the whole or any part of its property or assets; or

(ii) is about to remove the whole or any part of its property from the local limits of the jurisdiction of the Board; or

(iii) is likely to cause any damage or mischief to the property or assets or affect its value by misuse or creating third party interest,

the Board may direct the financial company, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Board, when required, the said property or assets or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of unpaid public deposit, or to appear and show cause why it should not furnish security.

(B) Where the financial company fails to show cause why it should not furnish security, or fails to furnish the security required, within the time fixed by the Board, the Board may order the attachment of the whole or such portion of the properties or assets of the financial company as appears to it to be sufficient to satisfy any certificate for the recovery of unpaid public deposit.

(13) The depositor shall, unless the Board otherwise directs, specify the property or assets required to be attached and the estimated value thereof.

(14) The Board may also in the order direct the conditional attachment of the whole or any portion of the property or assets specified under subsection (13).

(15) If an order of attachment is made without complying with the provisions of sub-section (12), such attachment shall be void.

(16) The Board may, after giving the depositors and the financial company an opportunity of being heard, determine the amount of deposits due and pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, within such time or in such manner as the Board thinks fit to meet the ends of justice.

(17) The Board shall send a copy of every order passed by it to the applicant and the financial company.

(18) If any financial company fails to comply with an order passed by the board under sub-section (16), the Board may appoint one or more Recovery Officer and issue a certificate to the Recovery Officer for recovery of the amount of unpaid public deposit specified in the certificate.

(19) In the case of disobedience of an order made by the Board under sub-section (11) or subsection (12) or under sub-section (16) or subsection (20) or breach of any of the terms on which the order was made, the Board may order the properties and assets of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the

civil prison for a term not exceeding three months, unless in the meantime the Board directs his release

(20) Where it appears to the Board to be just and convenient, the Board may, by order -

- (a) appoint a receiver of any property or assets; whether before or after grant of certificate for recovery or unpaid public deposit;
- (b) remove any person from the possession, custody or management of the receiver;
- (c) commit the same to the possession, custody or management of the receiver;
- (d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Board and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Board thinks fit; and
- (e) appoint a Commissioner for preparation of an inventory of the properties of the financial company or for the sale thereof.

(21) The application made to the Board under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of application.

(22) The Board may make such order and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Right to legal representation

25. The depositor or the financial company may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case under this Act before the Board.

Explanation. - For the purposes of this section, -

- (a) "chartered accountant" means a chartered accountant as defined in clause (b) of subsection (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

- (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "legal practitioner" means an advocate, Vakil or an attorney of any High Court, and includes a pleader in practice.

Limitation

26. The provisions of the Limitation Act, 1963 (36 of 1963) shall as far as may be, apply to an application made to the Board.

Members, officers and other employees of Board to be public servants

27. The member or other officers and employees of the Board and the Recovery Officer, Receiver and shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Civil court not to have jurisdiction

28. No civil court (except the Supreme Court or a High Court exercising jurisdiction under article 226 or 227 of the Constitution) shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under this Act to determine and no injunction shall be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court

29. Any person aggrieved by any decision or order of the Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Board to him on any question of fact or law arising out of such order

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period allow it to be filed within a further period not exceeding sixty days.

Modes of recovery of unpaid public deposit

30. The Recovery Officer shall, on receipt of the certificate issued under sub-section (18) of section 24, proceed to recover the amount of unpaid public deposit specified in the certificate by one or more of the following modes, namely:-

- (a) attachment and sale of movable or immovable property of the financial company or any other person against whom the order is passed;

- (b) arrest of any person, who at the time of receiving public deposit or default in repayment thereof was in charge of and was responsible to the financial company for the conduct of business of the financial company, and his detention in prison.

Validity of certificate and amendment thereof

31. (1) It shall not be open to the financial company to dispute before the Recovery Officer the correctness of the amount specified in the certificate and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of certificate to a Recovery Officer, the Board shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The Board shall intimate to the Recovery Officer any order withdrawing or cancelling a certificate or any correction made by it under subsection (2).

Stay of proceedings under certificate and amendment or withdrawn thereof

32. (1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Board may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the Board shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.

(3) Where the order giving rise to demand of amount for recovery of unpaid public deposit has been modified in appeal, and, as a consequence thereof the demand is reduced, the Board shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal remains pending.

(4) Where the amount of unpaid public deposit is reduced or enhanced as a result of an appeal, the Board, shall, when the order which was the subject matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

Other modes of recovery

33. (1) Where a certificate has been issued to the Recovery Officer under sub-section (18) of section 24, the Recovery Officer may, without prejudice to the modes of recovery specified in section 30, recover the amount of unpaid public deposit by any one or more of the modes provided under this section.

(2) (a) The Recovery Office may, at any time by notice in writing, require any person from whom money is due to may become due to the financial company or to any person who holds or may subsequent hold money for or on account of the financial company, to pay the Recovery

Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of public deposit payable by the financial company or the whole of the, money when it is equal to or less than that amount.

(b) A notice under this sub-section maybe issued to any person who holds or may subsequently hold any money for or on account of the financial company jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.

(c) A copy of the notice shall be forwarded to the financial company at its registered office.

(d) Save as otherwise provided in this subsection, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purposes for any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

(e) Any claim in respect of any property or assets in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(f) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the financial company or that he does not hold any money for or on account of the financial company then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the financial company's liability for any sum due under this Act, whichever is less.

(g) The Recovery Officer may, at any time or from time to time amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(h) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the financial company to the extent of the amount so paid.

(i) Any person discharging any liability to the financial company after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the financial company so discharged or to the extent of the financial company's liability for any public deposit due under this Act, whichever is less.

(j) If a person to whom a notice under this subsection is sent fails to make payment in pursuance thereof to the Recovery Officer, such person shall be liable for the payment of the amount

specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an unpaid deposit due from him, in the manner provided in this Act and the notice shall have the same effect as an attachment of a public deposit by the Recovery Officer in exercise of his powers under section 30.

(3) The Recovery Officer may apply to the court in whose custody there is money belonging to the financial company for payment to him of the entire amount of such money, or if it is more than the amount of public deposit due an amount sufficient to discharge the amount of public deposit so due.

(4) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.

(5) The Recovery Officer may recover any amount of public deposit due from the financial company by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961).

Application of certain provisions of the Income-tax Act, 1961

34. The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of unpaid public deposit under this Act instead of to the Income tax

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the financial company under this Act.

Appeal against order of Recovery Officer

35. (1) Notwithstanding anything contained in section 34, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him prefer an appeal to the Board.

(2) On receipt of an appeal under sub-section (1), the Board may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 30 to 34 (both inclusive).

CHAPTER V

WINDING UP

Power of Bank to file winding up petition

36. Where, -

- (a) a financial company has, by virtue of section 6 or section 7 become disqualified to carry on the business of financial institution or from accepting public deposit; or
- (b) a financial company has been prohibited by the Bank from receiving public deposit and such prohibition continues for a period of three months or more, or
- (c) the Bank is satisfied that -
 - (j) a financial company is unable to pay its debt; or
 - (ii) the continuance of a financial company is detrimental to public interest or the interests of the depositors of the financial company,

the Bank may, file an application for winding up of such financial company under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force.

(2) A financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 (1 of 1956) or any other law for the time being in force relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision.

CHAPTER VI

PROHIBITION FROM ACCEPTANCE OF PUBLIC DEPOSITS BY UNINCORPORATED BODIES

Public deposit not to be accepted in certain cases

37. (1) No person, being an individual or an unincorporated association of individuals shall accept any public deposit -

- (a) if his or its business, wholly or partly includes any of the businesses of financial institution as contained in clause (e) of sub-section (1) of section 2; or
- (b) if his or its business is that of receiving public deposits under any scheme or arrangement or in any other manner, or lending in any manner:

Provided that nothing contained in this subsection shall apply to the receipt of money by way of loan by an individual from any of his relatives, or by an unincorporated association from any of the relatives of the individuals constituting it.

(2) Where any person referred to in sub-section (1) holds any public deposit on the date of commencement of this Act, which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within one year from the date of such commencement, whichever is earlier.

(3) No person, being an individual, or an unincorporated association of individuals shall, issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation. - For the purpose of this section, a person shall be deemed to be a relative of another if, and only if -

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicted in the list of relatives below :-

List of relatives

1. Father, 2. Mother (including step-mother), 3. Son (including step-son), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son 16. Daughter's son wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including step-brother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.

Power of District Magistrate to call for information

38. If the District Magistrate has reason to believe that any individual or unincorporated association of individuals has contravened or is contravening the provisions of section 37, he may call from such individual or unincorporated association of individuals any information relating to acceptance of public deposit or repayment thereof or cause an inspection of the records, books of account and documents and take such action as he deems fit.

CHAPTER VII

GENERAL PROVISIONS

Central Government's power to give direction

39. (1) The Central Government may, from time to time, give such direction to the Bank as it may, after consultation with the Governor of the Bank, consider it necessary in the public interest.

(2) The Central Government may, from time to time, require the Bank to furnish such returns, statements and such other particulars in regard to any proposed or existing measures for regulation of financial institutions, in such form and in such manner as the Central Government may specify, and the Bank shall furnish to the Central Government such returns, statements and particulars.

Power to exempt

40. The Bank on being satisfied that in the public interest, or in the interest of the depositors, or in the interest of the financial institution, it is necessary so to do, may declare by notification, that any or all of the provisions of this Act, shall not apply to a financial institution or a class of financial institutions or a financial company, or to any class of financial companies either generally or for such period as may be specified in the notification, subject to such conditions, limitations or restrictions as it may think fit to impose.

Protection of action taken in good faith

41. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or the Bank or the Special Officer or any other person for anything, which is in good faith done or intended to be done under this Act or in pursuance of any order, rule, regulation, direction made or given thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government or the Bank or the liquidator or the Special Officer or any of their officers or employees or authorised person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or in pursuance of any order, rule, regulation or made or direction issued thereunder.

(3) No member of the Advisory Council including the Chairperson and ex officio member shall incur any liability for tendering any advice to the Bank and no action shall lie against them in respect of any such advice.

Nomination by depositor

42. (1) Where a public deposit is held by a financial company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner as may be prescribed, one person to whom, in the event of the death of the sole depositor, or the death of all the depositors, the amount of deposit may be returned by the financial company.

(2) Notwithstanding anything contained in any other law for the time being in force, or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination

made under sub-section (1) purports to confer on any person the right to receive the amount of public deposit from a financial company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositors, or as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner as may be prescribed

Provided that nothing contained in this subsection shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner as may be prescribed, any person to receive the amount of deposit in the event of this death during the minority of the nominee.

(4) Payment by a financial company in accordance with the provisions of this section shall constitute a full discharge to the financial company of its liability in respect of the deposit.

(5) No notice of claim of any person, other than the person or persons in whose name a deposit is held by a financial company, shall be receivable by the financial company, nor shall the financial company be bound by any such notice even though expressly given to it

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced before a financial company, the financial company shall take due note of such decree, order, certificate or other authority.

CHAPTER VIII

PENALTIES

Penalties

43. (1) Whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act, or any order, rules, regulations or direction made or given thereunder or in any prospectus or advertisement issued, for or in connection with the invitation by any person, of deposits of money from the public wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any record, book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, it is his duty to produce or furnish or to answer any question put to him in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, he shall be punishable with fine which may extend to ten thousand rupees in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to one thousand rupees for every day after the first during which offence continues.

(3) If any person discloses any information, the disclosure of which is prohibited under section 22, he shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to one thousand rupees, or with both.

(4) If any person contravenes the provisions of section 6 or section 7, he shall be punishable with imprisonment for a term, which shall not be less than one year but which may extend to five years and with fine, which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(5) If any auditor fails to comply with any direction given or order made by the Bank under section 15, he shall be punishable with fine, which may extend to ten thousand rupees.

(6) Whoever, fails to comply with any order made by the Board, he shall be punishable with imprisonment for a term, which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.

(7) If any person, -

(a) receives any public deposit in contravention of any direction given or order made by the Bank in exercise of the powers under this Act; or

(b) fails to comply with any direction given or order made by the Bank under any of the provisions of this Act; or

(c) issues any prospectus or advertisement otherwise than in accordance with section 21 or any order made or direction given by the Bank under this Act,

he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend, -

(a) in the case of a contravention falling under clause (a), to twice the amount of the public deposit received; and

(b) in the case of a contravention falling under clause (c), to twice the amount of the public deposit called for by the prospectus or advertisement or one lakh rupees, whichever is more.

(8) If any person contravenes the provisions of section 37, he shall be punishable with imprisonment for a term, which may extend to twice the amount of public deposit received by such person in contravention of that section, or fifty thousand rupees, whichever is more, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, the imprisonment shall not be less than one year and the fine shall not be less than ten thousand rupees.

(9) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, rules or regulations or direction made or given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to twenty thousand rupees and where, a contravention or default is a continuing one, with further fine, which may extend to one thousand rupees for every day after the first, during which the contravention or default continues and with imprisonment for a term not exceeding three years or with both.

(10) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for a Metropolitan Magistrate or Judicial Magistrate of the First Class to impose a sentence or fine in excess of the limit specified in that section on any person convicted under this section.

Offences by companies

44. (1) Where a person committing a contravention or default referred to section 43 is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly

Provided that, nothing contained in this subsection shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer or employee of the company, such director, manager, secretary or other officer or employee shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation 1. - For the purpose of this section any offence punishable under this Act shall be deemed to have been committed at the place where the registered office of the financial company is situated or in the case of financial company incorporated outside India where its principal place of business in India, is situated.

Explanation 2. - For the purposes of this section. -

(a) "company" means any body corporate and includes a firm or other association of individuals;
and

(b) "director", in relation to a firm, means a partner in the firm.

Cognizance of offences

45. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under sub-sections (4), (6), clause (a) of sub-section (7) and sub-section (8) of section 43 shall be cognizable and no Court, inferior to that of a Chief Metropolitan Magistrate or as the case may be, Judicial Magistrate of the First Class or a Court superior thereto shall try any offence punishable under this Act.

(2) Save as those enumerated under sub-section (1), no court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by an officer of the Bank, generally or specially authorized in writing in this behalf by the Bank, and no Court other than that of a Chief Metropolitan Magistrate or a Judicial Magistrate of the First Class or the Court superior thereto shall try such offence.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a Magistrate if he sees reasons to so to do, may dispense with the personal attendance of the officer of the Bank filing the complaint, but the Magistrate may, in his discretion at any stage of the proceedings, direct the personal attendance of the complainant.

(4) A court, imposing any fine under this Act, may direct that the whole or any part thereof shall be applied in, or towards payment of, the costs of the proceedings incurred by the Bank.

(5) It shall be lawful for any Police Officer, if authorised by an officer not below the rank of Superintendent of Police, -

(a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary, any premises which he has reason to suspect, are being used for purposes connected with the conduct of any financial institution or acceptance of deposit in contravention of the provisions of this Act;

(b) to search the said premises and the persons whom he may find therein;

(c) to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any financial institution or acceptance of deposit in contravention of the provisions of this Act;

(d) to seize all things found in the said premises or elsewhere which are intended to be used, or reasonably suspected to have been used, in connection with any such activities as aforesaid;

(e) to examine any person having control of, or employed in connection with, any activities as aforesaid or any person connected with such activities;

(f) to order the production of any document, book or record in the possession or power of any person having the control of, or employed in connection with, any activities as aforesaid;

(g) to inspect and seize any records, register, books of account, documents or any other literature found in the said premises; and

(h) to submit necessary report for the purpose of taking any action against any such person for violation of any of the offences specified under sub-section (1).

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, apply insofar as they are not inconsistent with the provisions of this Act, to the searches and seizures made under this Act.

46. (1) Notwithstanding anything contained in section 45, if a contravention or default other than those contained in sub-section (1) of that section, is committed by a financial company, the Bank may, impose on such financial company, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twentyfive thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the financial company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such financial company.

(3) Any penalty imposed by the Bank under this section shall be payable within a period of thirty days from the date on which a notice issued by the Bank demanding payment is served on the financial company and, in the event of failure of the financial company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where, the registered office or the principal place of business of the financial company is situated

Provided that no such direction shall be made, except on an application made by an officer of the Bank authorised in this behalf.

(4) The Court, which makes a direction under sub-section (3), shall issue a certificate, specifying the sum payable by the financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any financial company in any court pertaining to any contravention or default in respect of which any penalty has been imposed by the Bank under this section.

(6) Where any complaint has been filed against a financial company in a court in respect of contravention or default of the nature referred to in section 45, no proceedings for imposition of penalty against that financial company shall be taken under this section.

CHAPTER IX

POWER TO MAKE RULES, REGULATIONS AND AMENDMENT OF RESERVE BANK OF INDIA ACT

Power to make rules

47. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the form of application, the documents and the fee which shall accompany such application under sub-section (2) of section 24:
- (b) the manner of nomination of one persons by the depositors under sub-section (1) of section 42;
- (c) the manner of varying of cancelling the nomination in the event of death of the sole depositor or all the depositors under subsection (2) of section 42:
- (d) the manner in which a minor nominee may be made under sub-section (3) of section 42; and
- (e) any other matter which is to be or may be, prescribed, or in respect of which provision is to be made or may be made by rules.

Power to make regulations

48. (1) The Bank may, by notification, make regulations consistent with the provision of this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a) determination of time, place and observation of such rules and procedures in regard to transaction of business at the meetings of the Advisory Council under sub-section (5) of section 3;
- (b) the fees and allowances to be made to the nominated members, the manner of filling up of vacancy and the procedure to be followed in discharge of their functions under subsection (8) of section 3:
- (c) the period within which the recommendations shall be made by the Advisory Council to the Bank under sub-section (2) of section 4.

Rules and regulations to be laid before Parliament

49. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Act not to apply in certain cases

50. The provisions of this Act shall not apply to the State Bank of India or a banking company as defined in section 5 of the Banking Regulation Act, 1949 (10) of 1949) or a corresponding new bank as defined in clause (da) of Section 5 of that Act or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or a Regional Rural Bank or a cooperative bank or a primary agricultural credit society or a primary credit society or an insurance company registered under the Insurance Act, 1938 (4 of 1938) or a company registered as a stock broker under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or a company registered as merchant banker under the Securities and Exchange Board of India Act, 1992 or a housing finance institution which is a company registered under the National Housing Bank Act, 1987 (53 of 1987).

Provisions of this Act to override other laws 51. The provisions of this Act shall have effect, notwithstanding, anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Power to remove difficulties

52. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made before each House of Parliament.

Repeal of certain provisions of Reserve Bank of India Act, 1934 and savings

53. (1) Sections 45H to 45T, sub-sections (4A), (4AA), (4AAA), (5), (5A) and (5B) of section 58B, proviso to sub-section (1) of section 58E and section 58G of the Reserve Bank of India Act, 1934 (2 of 1934) are hereby repealed:

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Act shall, in so far as such things or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of the Act as if the said provisions were enforced when such things was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Bibliography & Book Review

Select Bibliography

Raghavendra Prasad V.

Legal Officer

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Ashok K. Saxena, "Issuance of Commercial Paper - New Guidelines", (2001) 30 SCL S (Magazine) - explains the nature and meaning of commercial paper and summarises the major aspects of the RBI guidelines for its issuance (vide Notification No. IECD.3/08.15.01/2000-01 dated October 10, 2000 superseding all earlier guidelines). Commercial Paper which was introduced in the Indian money market in 1990 is basically an unsecured money market instrument, issued in, the form of a usance promissory note at a discount to its face value and provides a good route to corporates for short-term borrowings.

D. Varadarajan, "Liabilities of Common Carriers and the Effect of Section 9 of the Carriers Act, 1865 vis-a-vis Proceedings under the Consumer Protection Act, 1986", (2001) 29 SCL 171 (Magazine) - examines the liabilities of common carriers in detail especially the effect of section 9 of the Carriers Act, 1965 and the question whether the redressal agencies set up under the Consumer Protection Act, 1986 have jurisdiction to entertain complaints pertaining to loss or damage of goods entrusted to a carrier for transportation. (Section 9 of the Carriers Act provides that in a suit for recovery of damages for loss or nondelivery of goods, the burden of proof would not be on the plaintiff to establish that loss or damage or non-delivery was caused owing to the negligence or criminal act of the carrier, its servants or agents).

Dr. N.S. Gopalakrishnan, "The Patents (Second Amendment) Bill, 1999 -An Analysis", analyses the provisions of the said Bill including these on patentable inventions, rights of patent owner, terms of protection and use without authorisation, and opines that the amendments will be used as an effective instrument to create a monopoly in the market to sell patented products manufactured abroad.

Dr. R.K. Pathak, "Regional Provident Fund Commissioner vs. Shivkumar Joshi - A Historical Judgment", (AIR 2001 Journal 46) - a brief not on the above decision of the Supreme Court

wherein the Hon'ble Court extended the benefits of the Consumer Protection Act, 1986 to the members of the Provident Fund Schemes.

G.P Sahi, "Insurance Broker Regulations", (2001) 29 SCL 87 (Magazine) -discusses the role played by an insurance broker in insurance industry and gives a brief note on features of regulations prepared by Insurance Regulatory and Development Authority, constituted under the Insurance Regulatory and Development Authority Act, 1999.

Gagavalli Nageswara Rao, "An. Analysis of the Major Recommendations of the Report of the Sabanayagam Committee on Nidhis", (2001) 29 SCL 148 (Magazine) - analyses the recommendations made by the Sabanayagam Committee set up by the Central Government to examine various aspects of the functioning of Nidhi companies and suggests some measures aimed at promoting development of the Nidhi business sector and the smooth transition to the new regulatory framework.

Justice Jitendra Bhatt, "The American Bar Association", (2001) 2 SCC 18 (Journal) - elucidates the structure of American Bar Association including organisational set-up, design and desideratum, law practice management, legal-aid mission, *pro bono publico*, and board of governance.

K.S. Ravichandran, "Fast Track Scheme - A Case Study", (2001) 29 SCL 163 (Magazine) -discusses and interesting case study, bringing out significant aspects of the Fast Track Scheme announced by the Government to facilitate the removal of a company's name from the register of companies.

M. Krishnan, "Companies (Amendment) Act, 2000 - Depreciation under Section 350 for Computation of Managerial Remuneration", (2001) 30 SCL 18 (Magazine) - examines the amended section 350 of the Companies Act under which, for the purpose of calculating managerial remuneration, the amount of depreciation shown in the books of accounts (whether calculated on the WDV method or the SLM method) is to be taken into account, points out its significance and suggest that the net profit for declaration of dividend should be the same as that for managerial remuneration.

Vijja Kumar, "The Chit Funds Act, 1982 - Need for Enforcement in State of Delhi", (2001) 30 SCL 183 (Magazine) - analyses in brief the main features of the Chit Funds Act and expresses reservation as to why its has not been enforced in the State of Delhi which is still governed by the Madras Chit Funds Act, 1961. (In *Sriram Chit & Investment (P) Ltd. AIR 1993 SC 2063*, the Supreme Court had upheld the validity of the Chit Funds Act, 1982).

Neetu Prakash, "BSE vs. NSE - A Comparative Analysis", (2001) 29 SCL 129 (Magazine) -discusses briefly the functioning of the Bombay Stock Exchange and the National Stock Exchange and makes a comparative analysis of the performance of the BSE and NSE in terms of number of companies listed, returns, average daily turnover, market capitalisation and number of shares traded.

Nishant Parikh, "Auditors, non-audit Services and Auditorial Independence", (2001) 29 SCL 69 (Magazine) - examines the issue of non-audit services and auditorial independence in the light of the relative American and Indian Law and Practice.

Prasanth Srinivas, "Inter-corporate Loans, Investments, Guarantees and Securities - Section 372A", (2001) 29 SCL 58 (Magazine) - explains the new provisions which are incorporated by the Companies (Amendment) Act, 1999 by amending the relevant provisions in the Companies Act, 1956, which has simplified and liberalised procedural requirements pertaining to inter-corporate loans, investments, guarantees and securities.

P Bhaskara Narayana, "Audit Committees -Learning from Experience", (2001) 30 SCL 1 (Magazine) - dwells upon the rights and obligations of the Audit Committee and its crucial role in corporate governance. Section 229 A which was inserted in the Companies Act, 1956 by Companies (Amendment) Act, 2000 requires that every public company having paid up capital of not less than Rs. 5 crore, shall constitute a committee of the Board known as the 'Audit Committee' which shall function in accordance with the terms and conditions specified by the Board in writing.

P Bhaskara Narayana, "Companies (Amendment) Act, 2000 - Big Role for Small Shareholders", (2001) 30 SCL 191 (Magazine) - examines the newly introduced provisions of the Companies (Amendment) Act, 2000 in the Companies Act, 1956 with the aim of protecting the interests of small shareholders and small depositors and points out certain deficiencies which need to be made good.

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P M. Bakshi, "Information Technology: Legal Issues", (2001) 29 SCL 186 (Magazine) - highlights the provisions of the Information Technology Act, especially dealing with computer crimes.

R. Kalidas, "Companies (Amendment) Act, 2000 - Issues to Ponder", (2001) 30 SCL 13 (Magazine) - examines some of the major amendments introduced by the Companies (Amendment) Act and pin points certain grey areas which need to be lit up by official clarification.

Ramya Seetharaman, "What is an NBFC?", (2001) 29 SCL 80 (Magazine) - highlights the functioning of NBFCs which play a significant role in the economy of the nation. Argues that the very definition of the NBFC under the RBI Act and the directions issued thereunder suffers from certain ambiguities and needs to be amended to plug certain legal loopholes.

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S. Venugopalan, "Companies (Amendment) Act, 2000 - A Detailed Analysis", (2001) 30 SCL 22 (Magazine) - discusses comprehensively the changes introduced by the Companies (Amendment) Act, 2000.

Srishti Jha, "Emerging Classes of Directors in India", (2001) 29 SCL 76 (Magazine) - examines the role of the "independent" director and the 'non-executive' director in corporate governance in the light of the Kumarmanagalam Birla Committee Report on Corporate Governance.

Subrata Kumar Ray, "Use of a Company's Common Seal: Common Sense is not Enough", (2001) 29 SCL 84 (Magazine) - explains the statutory necessity for a company to have a common seal which is the equivalent of its official signature.

V. Adhivarahan, "Bank Guarantees and Invocation", AIR 2001 Journal I - Critically analyses the law relating to Bank Guarantees and its Invocation. Elaborately discusses the types of guarantees, instances of onerous clauses, effect of amendment to Section 28, legal significance of non-obstante clause, freedom from interference by courts, manner of invocation and importance of honouring the bank guarantees.

V. Shankar, "Distribution of Primary Market Offerings" (2001) 29 SCL 121 (Magazine) -- analyses a proposal reportedly under consideration of SEBI in respect of making primary market offerings through the communication network established by Indian Stock Exchanges and also suggests measures to bring more effectiveness to the proposal.

V.L. Iyer, "Public Issue - the Book Building Process", SCL 124 (Magazine) - discusses the salient features of SEBI (Disclosure and Investment Protection) Guidelines, 2000 in respect of public issues of securities by companies, especially through the book building route - and also make certain suggestions for enhanced investor protection.

V.L. Iyer, "Stockinvest and Companies Act, 1956", (2001) 29 SCL 145 (Magazine) - discusses the salient features of the Stockinvest Scheme formulated by the Reserve Bank of India and being implemented by various banks for the benefit of investors - points out certain provisions in the scheme which do not match with the provisions of the Companies Act, 1956 and suggests amendment to the Companies Act to remove the anomalies.

Vishnu Jerome, "Need to Adopt Global Accounting Standards for Acquisitions and Mergers", (2001) 29 SCL 52 (Magazine) - analyses the different accounting standards adopted in India and suggests certain modifications with regard to accounting standard 14 (as laid down by ICAI) which is applicable in India, in the interest of enhanced investor protection.

Vivek Kumar Jha, "Financial Assistance by a Company for the Purchase of its Own Shares -Need for Amendment of Section 77 of the Companies Act, 1956", (2001) 29 SCL 102 (Magazine) - examines the issue under Indian and English laws which prohibit a company from extending financial assistance to a person for the purpose of acquiring its own shares and opines that English Law on the point is more in tune with the modern, times than the Indian Law and suggests suitable amendments on the lines of English Law.

Vivek Sadhale, "Amendment of Nomination Form 2B", (2001) 29 SCL 168 (Magazine) - explains several crucial and significant aspects of making a nomination in respect of shares, debentures and fixed deposit in the background of the recently amended Form 2B viz., the nomination form for the Companies (Central Government's) General Rules and Forms, 1956.

Book Review
Protection Of Human Rights -
by C. Chinna Vyran, B.Sc., BL.,
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Human Rights, in general, can be defined as "those rights which are inherent in our nature and without which we cannot live as human beings". However, the expression has not been specifically defined in the Universal Declaration of Human Rights, 1948 and International Covenants of 1966 of the United Nations. The Protection of Human Rights Act, 1993, Section 2(d), provides that the expression "Human Rights" means, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the international covenants and enforceable by Courts in India.

2. VSS Law House, Ginge 640 202, Tamil Nadu has published a small and handy text book on Protection of Human Rights and priced it at Rs. 70/-. This book contains the Protection of Human Rights Act, 1993 (act 10 of 1994) with case law, National Human Rights Commission (Procedure) Regulations, 1994, State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997, Tamil Nadu State Human Rights Commission (Salaries and Allowances and Other Terms and Conditions of Service of Members) Rules, 1996, Tamil Nadu Notification under Protection of Human Rights Act, Universal Declaration of Human Rights, 1948, International Covenant on Economic, Social & Cultural Rights, International Covenant on Civil and Political Rights, 1966 and Guidelines laid down by the Supreme Court for the Protection of Fundamental Rights Guaranteed under Article 21 of the Constitution of India along with a brief introduction to the development of the Human Rights Movement.

3. The author has given special emphasis to the Protection of Human Rights by the Supreme Court and the broad Guidelines laid down by the Supreme Court on various occasions to protect the fundamental rights guaranteed under Article 21 and Part-III of the Constitution. Right to livelihood, Right to Compensation and Rehabilitation for injuries done or caused by State agents or agencies, Right to Speedy trial, Right to help, Right to gender equality, Right to environment and Right to dignity of individual are some of the judicially created rights which can also be regarded as human rights as viewed by the Courts in India and also of various other countries.

4. In Vishaka and Ors. V. State of Rajasthan, (AIR 1997 SC 3011 = 1997 SCC (Cr.) 932.), the Supreme Court upheld the Right to Gender Equality and held that Sexual Harassment and Abuse

at Work place was a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. The author has reviewed this case and has further stated that one of the logical consequences of such an incident is also the violation of victim's fundamental right under Article 19(1)(g) of the Constitution of India and such violations, therefore, attract remedy under Article 32 of the Constitution of India for enforcement of these fundamental rights.

5. The Protection of Human Rights Act, 1993 (Act 10 of 1994) basically provides for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better Protection of Human Rights and for matters connected therewith or incidental thereto. The Commission Constituted under the Act shall not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force. Section 36(2) expressly provides that the Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the Act constituting violation of human rights is alleged to have been committed. Some of the State Rules have also expressly stated the details of complaints not ordinarily entertainable. These may generally include vague, anonymous and pseudonymous or illegible, trivial or frivolous complaints, matters barred under Section 36(1) and (2) of the Act. Further instances are where the dispute relates to civil disputes such as property rights and contractual obligations; the complaint relates to service matters or labour or industrial disputes or the allegation do not make out any specific violation of human rights or the matter is subjudice before a Court or Tribunal or the matter is covered by a judicial verdict or decision of the Commission, or where a copy of the complaint addressed to some other authority is received by the Commission and the matter is outside the preview of the Commission. No fee is chargeable on the complaints and the complaint should disclose a complete picture of the matter complained against.

6. The State Human Rights Commission can order compensation or suggest disciplinary action or departmental action. The Commission's orders are only recommendatory in nature. The recommendations can either be accepted or rejected within a month. The State Human Rights Commission is at liberty to approach High Court or even. Supreme Court for enforcement of its order. There is no provision for any appeal but review of recommendations is provided in the Act.

7. In Chapter-II, the Appendix, the author has arranged the information in a tabular form which deals with the basic instruments concerning human rights (instruments covering overall dimensions, instruments re-emphasizing some specific dimensions, implementation mechanism) and ratification, accession/acceptance etc., by India on the International Human Rights Instruments.

8. The book provides some very useful material on the subject and deals comprehensively with the topics identified by the author. Human rights being a widely recognized and live issue today, it is essential to have a book on human rights at any library. This book caters to that need of the day.

The healthy stomach is nothing if not conservative. Few radicals have good digestions.

- BUTLER, Samuel, *Notebooks: Mind and Matter: Indigestion in The Notebooks* (London: Jonathan Cape, 1926), p. 77.

... conspiracy, that darling of the modern prosecutor's nursery.

- HAND, Learned, in *Harrison v. United States*, 7 F. 2nd 259, 263 (CCA 2nd, 1925)

It is perfectly possible and even may be rational to enact that a conspiracy to accomplish what an individual is free to do shall be a crime.

- HOLMES, Oliver Wendell, *Drew v. Thaw*, 235 U.S. 432, 438 (1914)

A Report On The 2nd In-House Training Programme For Legal Officers And Asstt. Legal Advisers

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Asst. Legal Adviser

Knowledge is power and sharing knowledge by means of training and development is sharing of power. An in-house training programme is a way of sharing knowledge and experiences of senior officers with junior officers and operates as a platform to clarify the various issues involved in handling work. Law being dynamic in its nature and new laws being introduced from time to time to regulate the socio-economic activities in the society, an in-house training programme helps to develop an overview of various laws which we come across in the day-to-day operations and functioning of the Legal Dept. of the central bank of the country.

The 2nd in House Training Programme was conceived and designed in consultation with the Principal Legal Adviser and at the initiative of Shri M.A. Batki, Legal Adviser. Shri V.K. Jayakar and Shri P.S.N. Prasad, ALAs were identified as Programme Directors. Legal Advisers, Shri M.A. Batki, Shri S.C. Gupta and Shri S.R. Kolarker and all the senior officers came forward for delivering lectures on different laws and sharing their experiences with junior officers of the Department from 19th March 2001 to 30th March 2001 at the Conferentia Lex in Legal Department (on 23rd floor). The Training Programme was conducted on all working days from 4.00 p.m. to 5.30 p.m. and was thereafter open for 15 minutes for a question and answer session.

Shri N.V. Deshpande, Pr. Legal Adviser formally inaugurated the Training Programme on Monday, 19th March 2001 at 4.00 p.m. He spoke about the objects of the training and emphasised the need to link law with practical issues which are being handled by the Department.

On the same day Shri M.A. Batki, Legal Adviser gave an overview of the Constitution of India and Administrative law with reference to the Bank and also spoke about handling references pertaining to Department of Administration and Personnel Management and other groups.

On 20-3-2001, Shri S.C. Gupta, Legal Adviser delivered a talk on the Banking Regulation Act, 1949 and some of the salient features of Financial Sector Legal Reforms.

On 21-3-2001, Shri G.S. Hegde, Deputy Legal Adviser addressed the gathering , on RBI (Amendment) Ordinance, 1997, Vasudevan Committee Recommendations, Futuristic Measures and the salient aspects of the new Financial Companies Bill.

On 22-3-2001, Shri K.D. Zacharias, Joint Legal Adviser discussed about the RBI Act, 1934, Public Dept Act, 1944, Industrial Disputes Act, 1947, the proposed Government Securities Bill, the Domestic Enquiry Procedure followed by the Bank and the Principles of natural justice and the manner of handling the references relating to Administration & Personnel matters.

On 23-3-2001, Shri S.R. Kolarkar, Legal Adviser shared his views on FEMA, 2000 in comparison with FERA, 1973 and the role played by the Reserve Bank in formulating various Regulations under the said Act and he also discussed the RRBs Act and BR Act (as applicable to co-operative banking sector) and current status of Prevention of Money Laundering Bill.

On 27th March 2001, Shri P.S. Bindra, Joint Legal Adviser presented an overview of Payments System, Payments System Group, Committees constituted in this regard, issues relating to Real Time Gross Settlement and Information Technology Act, 2000 including Electronic Funds Transfer.

On 28th March 2001, Shri D.N. Tripathi, Joint Legal Adviser discussed about the Consumer Protection Act and the various judgements pronounced by the National Consumer Disputes Redressal Commission and the Supreme Court and the stand taken by the Bank before various Forums and Courts. He also spoke about the DICGC Act.

On 29th March 2001, Shri B.B. Tiwari, Joint Legal Adviser delivered a lecture on the Ombudsman Scheme with special reference to paras 13,16,19 and 21 of the said Scheme and also clarified various issues raised by the participants including applicability of the Law of Limitation for raising a dispute before the Ombudsman.

On 30th March, 2001, Shri R.K. Gupta, Deputy Legal Adviser in his talk emphasized the need to take proper care of Documentation and Title Investigation including techniques of good drafting.

Shri N.K. Puri, Joint Legal Adviser collected the materials with regard to the working of various departments of the Bank and those materials were also distributed to the participants.

A feedback and summing up session was chaired by Shri N.V. Deshpande, Pr. Legal Adviser in the evening on 30th March, 2001. In his concluding remarks, the Pr. Legal Adviser stated that the programme had achieved its objective and emphasized the need for further such in-house

training programmes at regular intervals and added that the Legal Study Circle will definitely add to the knowledge of younger generation and refresh the memory of senior officers.

Nearly 20 officers of junior level had attended the 2nd In-House Training Programme. The feed-back indicates that the Programme has familiarised the newly inducted officers in the Legal Department with the various laws relevant to the Bank and the functioning of the Department as a whole.

A Conservative: a statesman who is enamored of existing evils, as distinguished from the Liberal, who wishes to replace them with others.

- BIERCE, Ambrose, The Devil's Dictionary in VII The Collected Works of Ambrose Bierce (New York: The Neale Publishing Company, 1911), pp.54-55.

... true conservatism involves progress, and... unless our financial leaders are capable of progress, the institutions which they are trying to conserve will lose their foundation.

- BRANDEIS, Louis D., in Mason, Alpheus Thomas, Brandeis: A Free Man's Life (New York: The Viking Press, 1946) p. 162-63

* Programme Director, 2nd In-House Training Programme.

LD News

Welcome

Smt. B. Jhansree, joined the services of the Bank as Legal Officer in Gr. B on 12th February 2001.

Smt. J.M. Khire, Asst Librarian jointed the Dept. on 5th February 2001

Shri Pawaskar, Typist from Byculla Office joined the Dept. on 13th January 2001.

Smt. Girija Iyer, Clerk Gr. II joined the Dept. from Byculla Office on 10th January 2001.

Smt. N.B. Rawat, Steno joined the Dept. from DBOD on 6th February 2001.

Smt. A.A. Khandekar, Clerk Gr. II joined the Dept. from Cash Dept., Mumbai on 3rd Feb. 2001.

Shri Karhadkar, Typist joined the Dept. from ECD on 19th March 2001.

Good bye

Shri Suratkar, Asst. Librarian was transferred to B.TC w.e.f. 15th Feb. 2001.

Smt. Asha Rao and Smt. Doiphode, Typists were transferred to Belapur Office on 6th Jan. 2001 and DEBC on 20th March 2001 respectively.

Shri Shinde, Clerk Gr. II was transferred to Belapur Office w.e.f. 13th Jan. 2001.

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I, N.V. Deshpande, hereby declare that the particulars given above are true to the best of my knowledge.

Dated: March 2001

N.V. Deshpande
Signature of Publisher

Mail Bag

Dear Sir,

RBI Legal News and Views

I found the above Journal very interesting, informative and educative. I request you to kindly include my name in your mailing list.

Thanking you,

Yours faithfully,

R.S. Jain
Asst. General Manager,
DEBC, RBI, CO.,

Main Building, 3rd Floor,
Mumbai-400 001.

Dear Sir,

Reg : Subscription of RBI Legal News & Views

Presently I am working as Asst. General Manager in the Vysya Bank Ltd., Recovery & Legal Department, Bangalore and looking after the legal matters pertaining to the Bank. May I request you to please enroll me in the list of subscribers of the above magazine.

Thanking you,

Yours faithfully,

B.V Prakash
The Vysya Bank Ltd.,
No. 16, II Floor,
II Main Road,
Seshadripuram,
Bangalore-560 020.

Dear Sir,

Reg.: Subscription of RBI Legal News & Views

Presently I am working as Law Officer in the Vysya Bank Ltd., Recovery & Legal Department Bangalore and looking after the legal matters, especially cases related to recovery of bank loans etc.

I had opportunity to see your RBI Legal News & Views. The articles are very much informative and are well compiled.

I would like to be a regular reader of your esteemed magazine and I would request you to enroll my name for subscription. The magazine may please be sent to the following address.

Thanking you,

Yours faithfully,

K.V.R..K. Prasad
Law Officer,

The Vysya Bank Ltd.,
Recovery & Legal Department,
10/5, Ratnam Complex,
Kasturba Road,
Bangalore-560 001.

Dear Sir,

I had opportunity to see your RBI Legal News and Views. I must say RBI is doing a good service in the field of law under your Editorship by publishing RBI Legal News and Views which is very informative.

I am a research scholar (PHD-Law) w.e.f.5-5-1999 with University of Rajasthan, Jaipur.

I should be happy if you would include me also in your regular mailing list.

Thanking You,

Youth faithfully,

Satish Chand Gupta
The Bank of Rajasthan Ltd.,
Law Department,
C-3, Sardar Patel Marg,
C-Scheme, Jaipur

Dear Sir,

Reg.: RBI Legal News & Views

During a recent training at N.I.B.M. Pune. I came across your bulletin for January 2001. No. 1, Vol. 5.

I am extremely impressed by the coverage and hope it will be of great help to all bankers particularly to Branch Managers who come across many operational problems and have to take a decision within a short time.

I will be obliged if you can send me the bulletin in the following address. In case required, I can also subscribe to it with requisite fee (please do the needful).

In case possible, please arrange to send the earlier 4 issues of 2000.

Thanking You,

Yours faithfully,

M.K. Biswal
D-94-Woodland,
(Near Gandhi Bhavan),
Kothrud,
Pune-411 029.

Sir,

I would like to know the procedure to subscribe to RBI Legal and Views. Please keep me informed about the same.

Thanking You,

Yours Sincerely,

N. Vijayalakshimi
Manager (Legal),
IDBI, Mumbai.

Ed. Note : The names of the above readers have been included in the mailing list. Further, we have received 15 letters from law officers of banks and financial institutions who attended training programmes at the Bankers Training College for including their names in the mailing list. The names have been included in the list as requested by them.