
SELECT BIBLIOGRAPHY

V.Raghavendra Prasad
Asstt. Legal Adviser

Ms. Ankita Goel, "The Dividing Line Between Lease and Licence is Thin", AIR 2003 Journal 304 - examines in detail the distinction between lease and licence in the background of statutory definitions and case law.

Arun Beriwal & Roopali Chaturvedi, "Judicial Corruption & Removal of Judges", AIR 2003 Journal 349 - discusses the issue of judicial corruption and removal of judges under Constitution of India and explains the provisions relating to impeachment, correctional mechanism and accountability in judicial system.

Chandresh C. Chhaya, "Security Creation for Debenture Issues", (2003) 48 SCL 22 - explains in detail the method and procedure to be adopted for creating security in respect of debentures issued by the company and discusses various aspects involved viz., the time limit for creation of security, the methods of creating charge, the points to be checked when land is offered as security, the procedural steps for creation of security and the formalities to be complied with on redemption.

Dr. G.B. Reddy, "Women and Law in India - Issues and Challenges", AIR 2003 Journal 331 - discusses legal provisions relating to woman in India with respect to constitutional law, personal laws, criminal laws and socio-economic laws.

Dr. P.T. Giridharan, "Divested MAOCARO as Diversified CARO", (2003) 48 SCL 50 - traces the

background for the change over of Manufacturing and Other Companies (Auditor's Report) Order, 1988 (MAOCARO) by the Companies (Auditor's Report) Order, 2003 (CARO).

D.K. Sharma, "Compulsory Registration of Decrees - When, Why and How?" AIR 2003 Journal 378 - discusses in detail various issues relating to conceptual as well as procedural ambiguity about the registrability of consent or compromise decrees.

Guman Singh, "Permanent Lok Adalat For Public Utility Services: A Statutory Landmark", AIR 2003 Journal 354 - highlights the important provisions relating to establishment of permanent Lok Adalat for resolution of disputes pertaining to public utility services vide Legal Services Authorities (Amendment) Act (No. 37) of 2002.

Ms. Padmini Srivatsan, "Salient and Distinct Features of Producer Companies", (2003) 48 SCL 27 - elucidates the salient and distinct features of the new concept of 'producer companies' inserted in Chapter IXA of the Companies Act, 1956 and highlights the advantages that are anticipated in future due to the formation of producer companies.

Mrs. Bibha Tripathi, "Voter's Right to Information", AIR 2003 Journal 346 - highlights the number of serious elements of electoral process in India and examines the important issues regarding electoral reforms i.e. voter's right to information with the

help of recent case law and opines that voter's right to information can be protected and flourished by removing the drawback of the laws relating to voter's right to information with the new trends of criminal jurisprudence.

Prof. Gurbax Singh, "An Overhaul of the Law of Consumer Protection by Consumer Protection (Amendment) Act, 2002", AIR 2003 Journal 291 - elucidates the important provisions of the Consumer Protection (Amendment) Act, 2002.

Surendra U. Kanstiya, "And Now, Comes the Securities Ombudsman", (2003) 48 SCL 41 - examines and discusses the salient features of

the Securities and Exchange Board of India (Ombudsman) Regulations, 2003 starting with the definition of Ombudsman, establishment of office of Ombudsman its territorial jurisdiction, its powers and function, scope of the authorities, nature of complaints which are entertainable and the procedure for redressal of complaints.

V.T. Korde, "Competition Advocacy under the Competition Act," 2002, (2003) 48 SCL 17 (Magazine) - explains relevant legal provisions of the Competition Act, 2002 and gives a brief note on what competition advocacy really means and what it is intended for.

The corporation counsel of today, if he is to live up to the challenge of his new responsibilities, will shun the kind of advice that is motivated by a desire to preserve the rubrics of a vanished era; he will be alive to the social, economic and political implications of the time; he will avoid a narrow, shortsighted approach to his corporation's problems; he will have the courage to advise against a business program or device which, although legally defensible, is in conflict with the basic principles of ethics. Failing this, he not only will be ignoring his obligations to his profession, he will be doing a disservice to his company, which may find itself in the position of winning a legal battle but losing a social war.

— GOSSETT, William T., "Corporate Citizenship," Vol. II
*The John Tucker Lectures (Lexington, Virginia: Washington and
Lee University, 1957), p. 208*

BOOK REVIEW

BANK LENDING

By Shri Arun Chatterjee

D.V.Sekhar

Asstt. Legal Adviser

The last 3 to 5 years have witnessed several developments, which have had a tremendous impact on the financial sector. This period has also seen the impact of the accelerated process of deregulation on the financial sector. Banks are now free to quote their own interest rates on loans/advances and term deposits. They now have to manage their investments and loans portfolios based on international norms and practices of risk management including asset-liability management. Provisioning norms for bad loans have become tighter. These developments have led to progressive computerization of banking transactions, networking of branches etc. The financial sector has begun to right-size.

BANK LENDING - Law, Practice & Recovery, written by Shri Arun Chatterjee and published by Skylark Publications, covers the impact of statutory changes, legal precedents and the evolving lending practices on bank lending. The book stresses on the urgent requirements of putting in place proper systems and procedures in a computerized environment, which is highly competitive. Banks need to review their existing security documentation, revamp lending policies and procedures and initiate recovery action promptly at the appropriate forum.

The book has been divided into nineteen chapters. The first chapter deals with creation of security interest. Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act (SRFAESI Act), 2002, defines "security interest" as the right, title and interest of any kind whatsoever

upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment,

The provisions relating to Bailment and Pledge are explained in Chapter 2. The commonest forms of security for bank lending are bailment and pledge of goods. Both these types of security interests place the property (which includes documents of title to goods) in the possession of the bank and the borrower can take back the goods, or part of them, only against the issue of delivery orders by the branch and against the availability of adequate funds in the borrower's account. With the growth of commerce and industrialization, for large entities, which have multi-locational factories etc., pledge and bailment as security for bank lending, on practical consideration are being replaced by hypothecation of movable property.

The provisions relating to Hypothecation and Assignment of rights over the properties have been discussed in detail in Chapter 3. The author has stated that Hypothecation as a security for a debt has not been defined either in the Indian Contract Act or in the Transfer of Property Act. The recently enacted legislation, the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, has given a definition of the expression "hypothecation." The definition, given below, draws heavily from an early English decision (Government Stock and other Securities Investment Company vs. Manila Railway Company Ltd. (1897) A.C. 81).

"Hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property".

General Lien, Set-off and Appropriation are discussed in Chapter 4. In this Chapter, the author has exhaustively discussed the right to set-off, the rules of appropriation etc.

The author has discussed Mortgage and Charge in Chapter 5. This Chapter covers the meaning of the phrases 'mortgage', 'mortgager', 'mortgagee' and the various types of mortgages in vogue. Various rights and liabilities of mortgager and mortgagee are also discussed in this Chapter. The author has also discussed the concept of Charge.

The discussion relating to indemnities and guarantees find place in Chapter 6. The second option for the banker is to obtain an indemnity bond or guarantee to secure the advance to the borrower. Under an indemnity, the borrower as indemnifier undertakes (or promises) to save the bank from loss arising from non-payment or non-performance of an obligation by the indemnifier (borrower) or any other persons. However, indemnity bonds are more in vogue in cases of loss of demand drafts and other securities in the hands of the customer than as collateral security for bank advances. The Master Circular relating to guarantees and co-acceptances, issued by Reserve Bank of India is annexed in this Chapter.

Chapter 7 deals with the Law of Limitation. Any person having an interest in a property is expected to ensure that his rights and remedies in regard to that interest are not lost due to his negligence or failure to take timely action against other persons who seek to deprive him of that interest. The various important topics relating to Condonation of delay, Exclusion of Time, Acknowledgement of Debt, Payment on account of debt, Extinguishment of Right etc., are discussed

in this Chapter. Various Articles in the Limitation Act which pertain to banking transactions are discussed exhaustively in this Chapter.

Registration of Charges has been discussed elaborately in Chapters 8 & 9. The various procedural aspects contemplated under various statutes pertaining to the requirements of registration of charges, modification of charges, consequences for non-registration of charges etc. are outlined briefly in this Chapter. The various forms that are required to be filed before the various authorities for registration of charge are also annexed in this Chapter.

Chapter 10 deals with Documentation and Stamping. The author has stated that bank documents have been drafted with some precision in the past. However, the rapid changes in the banking, technological and legal environment have made it necessary to have comprehensive relook at these security documents. Various methods of payment of stamp duties on the documents and instruments obtained by the banks have been discussed elaborately in this Chapter.

In Chapters 11 and 12, the author has discussed the topics of Documents and Evidence. Various provisions of the Indian Evidence Act pertaining to bank documents are outlined in this Chapter. Admissibility, Presumption, Execution, Attestation, etc. of bank documents are discussed in elaborately in this Chapter. Various types of Power of Attorneys are also discussed in this Chapter.

The topics of Search and Non-Encumbrance Reports are discussed elaborately in Chapter 13. The author has discussed various topics like lispendance, non-encumbrance report, search report and searches to be made before various statutory authorities etc. under different headings.

'Non-Performing Assets' is discussed in Chapter 14. The author has briefly explained the various circulars and method of income recognition and NPA classification issued by the Reserve Bank of India from time to time. Various reporting formats are also annexed to this Chapter.

In Chapter 15 the author has discussed the topic of Compromises and Settlements. Banks are, as a general rule, averse to making sacrifices of interest and other charges in cases of negotiated settlements, since such concessions affect current income as also past income on which tax has already been paid. However, if the assets portfolio of the banking system has to be cleaned up within a restricted time-frame, opportunities of working out negotiated settlements, even at some loss, should not be forgone. The opportunity cost should also be kept in view; the faster the recoveries and recycling of funds, the quicker the recouping of the loss.

Chapter 16 deals with Recovery of Dues without initiating legal action. The various methods of recovery of dues by the banks without intervention of Court are discussed elaborately in this Chapter. The topic of Securitisation, Reconstruction and Enforcement is discussed in Chapter 17. Various concepts contemplated in the Securitization Act are discussed elaborately. Various guidelines, forms, reports etc., which are contemplated under the Securitization Act and Rules framed thereunder are annexed to this Chapter.

The topic of Recovery of Debts due to Banks through Debt Recovery Tribunals is discussed in Chapter 18. Banks and financial institutions at present experience considerable difficulties in recovering loans and also in enforcement of securities charged given to them. The existing

procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The entire procedure of filing of application before Debt Recovery Tribunal, Appeal before the Appellate Authority etc. are discussed exhaustively in this Chapter.

The discussion on Enforcement of Security through Civil Courts find place in Chapter 19. The jurisdiction of various Civil Courts, drafting of Plaint, cause of action, summary procedure, decree, execution, interim relief attachment & arrest, sale of properties etc. are dealt with extensively in this Chapter.

The book is based on upto-date statute law and case laws, and incorporate several new features for bankers, lawyers as well as readers who are interested in the legal aspects of bank lending. The latest case-law is discussed in the book to clarify the application of legislation, rules and procedure on bank lending. The book highlights the common defects in banking procedure and documentation and how these have been considered by courts and how they can be rectified. The book would be useful for the bankers, law officers of the banks, advocates, solicitors, students of law and JAIIB/CAIIB examinations, and all persons who are in any way concerned with bank lending. The book is priced Rs 500/-.

People often oppose a thing, Alexander Hamilton once noted, merely because they had no hand in planning it. This observation is just as true today as it was in Hamilton's time.

— *Bits & Pieces, Vol. 12 (April, 1979, No. 4), P. 1.*

FROM THE EDITORIAL DESK

A Conference on Reforming Payment and Securities Settlement Systems was hosted jointly by the World Bank and Board of Governors of the US Federal Reserve System, Washington recently. India-delegate consisted of three officials from RBI and one each from SEBI and BSE. An Interactive Simulation exercise for the participant countries proved to be very thought provoking. A birds eye view will, no doubt, suffice here.

How does a country address the issue on hand? Well, it must venture into serious in-depth studies on several perspectives relevant to the subject. The first and the foremost is "Political and Environment Perspective" which would include country's demographics, physical infrastructure, communication network and technology development. The second is "Economic Perspective" which would include monetary, fiscal, exchange rate, employment and international trade as well as financial transaction policies. The third is "Financial Sector Perspective" which would include the whole gamut of the banking and non-banking institutions sector, capital markets, roles of various stakeholders/players such as central bank, government, regulators, service providers, end-users and the like. The fourth is "Business Perspective" which would include availability of a variety of payment and financial instruments and their efficacies as well as payment mechanism practices prevalent in the country. This also covers transaction processing and pricing costs studies. The fifth is "Legal Perspective" which would include legal framework, international arrangements and role of judiciary in the country. Last but not the least "Oversight, Co-operation and Governance" in the context of crises handling with reference to past and present happenings and future course of action.

In India, authorities are extremely conscious of the complexity of the problem on hand. A gradualist approach is followed. National Payment Council and Payment System Advisory Committee regularly go into the issues to be addressed. A Committee on Payment Systems has even suggested a model law on Payment and Settlement Systems. Pending a legislation on the subject, the RBI has taken initiative to constitute RBI (Payment and Settlement Systems) Board under the RBI Act which would be operational shortly.

The present issue begins with an article on legal aspects of licencing of co-operative banks. It is followed by another article of topical interest viz., on the validity of computer out-puts as inputs in courts. In the Guest Column, we have the pleasure of presenting the views of Hon'ble Justice Arvind Savant on strengthening of the laws concerning corruption.

In the Judgements Section, we have included, a variety of judgements of different High Courts and the Supreme Court, which will be of interest to bankers. The Legislation Section covers the Central Vigilance Commission Act, 2003. In the Book Review and Bibliography Section we have reviewed a book on bank lending by Shri Arun Chatterji. The Bibliography Section as usual covers recent articles on law, which would be of interest to bankers. In FAQ, we have clarified some of the queries on registration of documents. Apart from the above, we have all our usual features like L.D. News and Mail Bag.

M.A. Batki
Legal Adviser

MAIL BAG

We have received letters from Dr. A. Vasudevan, M/s. V.V. Ramlinga Swamy, (Dy. Chief Manager, Visakhapatnam Steel Plant), Narendra N. Tiwari (Chief Executive Officer, Anjangaon Surji Nagari Sahakari Bank Ltd.), Ashok Kumar Gupta, J.C. Khurana, O.N. Ravi (Clearing Corporation of India Ltd.) and the Chief Executive Officer, Vidarbha Urban Banks Co-operative Associations Ltd., Nagpur to include their names in the mailing list.

The names of the above readers have been included in the mailing list.

What are the great faults of conversation? Want of ideas, want of words, want of manners, are the principal ones, I suppose you think. I don't doubt it, but I will tell you what I have found spoil more good talks than anything else – long arguments on special points between people who differ on the fundamental principles upon which these points depend. No men can have satisfactory relations with each other until they have agreed on certain ultimata of belief not to be disturbed in ordinary conversation, and unless they have sense enough to trace the secondary questions depending upon these ultimate beliefs to their source. In short, just as a written constitution is essential to the best social order, so a code of finalities is a necessary condition of profitable talk between two persons.

— HOLMES, Oliver Wendell, quoted in *The New York Law Journal*,
February 7, 1963, p.4, cols. 5-6

We did not consider this approach appropriate to our law office. Attainment in professional terms in an externally competitive, internally co-operative law office should, we felt, be measured by the challenge of the professional work offered and the extent of participation in the financial results of the practice. The client is sensitive to office size and finish, as is the lawyer.

— MANSION, Peter A., "Some Management Consideration
in Designing a Law Office," *Law Office Economics and
Management*, Vol XIII, (No. 3, Fall 1972), p. 292

FREQUENTLY ASKED QUESTIONS ON REGISTRATION OF DOCUMENTS

Joseph Raj
Dy. Legal Adviser

i) What is registration?

Registration is a legal requirement wherein the documents pertaining to transfer of immovable properties, which are required under the law to be registered, are brought on statutory records. A document once registered takes effect from the date of execution. Registered documents relating to any property shall take effect against any oral agreement or declaration, unless the agreement or declaration has been followed by delivery of possession of property. Registered documents are preserved and become public documents and any one can inspect or take copies of the same by paying the prescribed fees.

ii) What is effect of non-registration?

The Registration Act, 1908, provides for registration of various documents relating to transfer of movable and immovable properties. If a particular document is required to be registered under Section 17 of the Registration Act and it is not registered, it loses its legal validity and is rendered inoperative and unenforceable as it becomes inadmissible in evidence. By registration the proper legal title will pass on to the purchaser/transferee and the document also bears evidentiary value. In other words the title will be defective if registration of the document is not done. A registered document also raises a presumption as to payment of proper stamp duty. In case of loss or misplacement of the original, a certified copy can be obtained from the Registrar's office, if the document is registered.

iii) What are the documents to be compulsorily registered?

Section 17 of the Indian Registration Act deals with the documents that have to be compulsorily

registered. As stipulated therein, registration is compulsory for the following documents.

- a) instruments of gift of immovable property;
- b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

The State Government may, however, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. Further, the provisions of clause (b) & (c) above does not apply to -

- (i) any composition deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or party of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court (except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit proceeding); or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-officer; or

(ix) any order, granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1833; or (x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xi) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowment

or divesting any such treasurer of any property; or

(xii) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xiii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer.

iv) What are the documents for which registration is optional?

In terms of Section 18 of the Registration Act registration of the following documents is optional to the parties concerned.

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

(cc) (instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, or a value less than one hundred rupees, to or in immovable property;)

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by section 17 to be registered.

v) At which place should the document be presented for registration?

According to Sections 28 and 29 of the Registration Act, the document should be presented for registration at the office of the sub-Registrar within whose sub district the whole or some provision of the property to which such document relates is situated. The Registration Act, 1908 was amended with effect from 25.9.2001 withdrawing power of the sub Registrars of Delhi, Kolkata, Chennai, Mumbai to register documents relating to property situated anywhere in India.

vi) Within how much time should a document be registered?

A document should be registered within a period of 4 months from the date of its execution. If for any reason the document could not be registered within 4 months then it can be registered within an additional period of 4 months with the permission of the Sub-Registrar, after paying penalty as imposed by the Sub-Registrar. Penalty can be upto ten times of registration fee. If more than 8 months have passed since execution of the document, and if one is desirous of registering the document a separate deed of confirmation should also be executed and attached as an annexure to the original deed, for registration.

vii) What language should be used in the document?

The language used in the document should be common in the District where it is to be registered. The sub-Registrar can refuse to register the document if he does not understand the language used in the document and which is not commonly used in the district. However, registration of the document shall not be denied if a true translation of the document into a language commonly used in the district is also annexed to the document.

viii) What is the fee for registration?

The fee for registration is 1% of the market value (or agreement value whichever is higher) or a

maximum of Rs.30,000/- with effect from 1st April 2003.

ix) Are Wills required to be registered?

To make a valid Will registration is not compulsory. However, there is no harm in registering a will. Through registration of will, disputes and doubts regarding the execution could be avoided, since for registering the will the testator would have to admit execution thereof before the Sub-Registrar. No time limit is applicable with regard to the registration of will.

x) Are bonds required to be registered?

Registration for any kind of bond is not compulsory. But if the bond by itself creates and interest in immovable property of the value of Rs.100/- and upward, its registration will be compulsory.

xi) Is deed of partnership required to be registered?

Registration of a deed of partnership/dissolution of partnership is not compulsory. However, if the amount of value immovable property involved Rs.100/- is upwards the deed is to be compulsorily registered.

xii) Is registration compulsory for all types of transfer of immovable property?

All documents in respect of transfer of immovable property such as family agreement, agreement to sell, conveyance, gift deed, lease deed, leave & licence agreement, tenancy agreement, declaration deed, mortgage deed, exchange deed, power of attorney to sell for consideration etc. are to be registered compulsorily under the Registration Act.

xiv) Whether the presence of witness is necessary for registering a document?

Two witnesses are required at the time of completing the registration formalities to identify the persons who have executed the document. However, if the parties to the document produce sufficient documents for identification such as their passport then the presence of witness is not required for registration of document.

L.D. NEWS

Stop Press*

Shri M.A. Batiki, Legal Adviser retired from the services of the Bank after a long and distinguished career spanning over 27 years.

Seminar/Lecture

Shri S.C. Gupta, Legal Adviser handled a Session on Legal Reforms in Financial Sector in the 49th Central Banking Programme on 1st October 2003 at Reserve Bank Staff College, Chennai.

Shri K.D. Zacharias, Legal Adviser addressed the Senior Police Officers of Kolkatta on Regulation of NBFCs and State Legislations at the Senior Level Officers Training Programme organized by Kolkatta Police on 7th November 2003.

Shri P.S. Bindra, Jt. Legal Adviser addressed the participants of the Seminar on Money Laundering conducted by Bankers' Training College on Prevention of Money Laundering Act, 2002 on December 22, 2003.

Shri Babu Sanal V. Nair, Asstt. Legal Adviser attended the 50th Central Banking Programme conducted by Reserve Bank Staff College, Chennai from 17th November to 29th November 2003.

Congrats!

Shri B.B. Tiwari, Jt. Legal Adviser (Gr. 'E') has been empanelled for promotion to the post of Legal Adviser (Gr. 'F').

Welcome

Shri Suresh Kuppimablu, Asstt. General Manager reported to Legal Department on 7th October 2003 from Department of Currency Management.

Shri B.A. Dhond, Clerk Gr. II reported to Legal Department on 9th December 2003 from Cash Department.

Shri M. Unnikrishnan, Legal Officer (Gr-B) joined Legal Department on 15th December 2003.

Goodbye

Shri K.S. Kalyankar, Asstt. Manager attached to Legal Department has been transferred to Premises Department with effect from 30th December 2003.

Smt. Lakshmi Sunderrajan (P.S. Gr. 'A'), Smt. Jaya Rajagopal, (P.S. Gr. 'A'), S/Shri Kuttisankaran (Clerk Gr. I), M.B. Prabhu (Duftry), L.B. Ghanekar (Subedar Gr. I), S.S. Chile (Subedar Gr. II), R.S. Dakve, A.B. Kadam and S.M. Kunder (Record Clerks) have opted for OERS and retired from the services of the Bank.

Shri N.V. Parate, (Clerk Gr. I) attached to Legal Department has been transferred to Issue Department as Teller with effect from 29th December 2003.

* Shri M.A. Batki, Legal Adviser retired in January 2004 while this issue was under printing.

COMPUTER OUT-PUTS

-Whether valid inputs in Courts?

G.S.Hegde
Joint Legal Adviser

Good News and Bad News

1.1 Legal personnel are trained to test the veracity of a witness giving oral evidence and to prove documents in a court of law. The days are not far off when they will have to argue on the evidentiary value of computer out-puts. Computers have come to stay. They have impacted almost every walk of human life. Banking and financial sector is no exception to that. The use of computers in day-to-day operations has undoubtedly improved efficiency and service to the customers. The developments in the areas of networking and communication have made movement of electronic data very swift, easy and hassle free. Storing electronic data in a strategic place and facilitating easy, quick and efficient retrieval has become the order of the day. Paper work now looks very untidy and cumbersome. However, Steyn J¹ has summed up the other side of the story in the following words.

“On the other hand, computers are not infallible. They do occasionally malfunction. Software systems often have “bugs.” Unauthorised alteration of information stored on a computer is possible. The phenomenon of a “virus” attacking computer systems is also well established. Realistically, therefore, computers must be regarded as imperfect devices.”

1.2 The good news is, computers are fast and efficient and the bad news is, they are imperfect.

Fighting the Bad News

1.3 The laws made prior to the advent of

1. In R v Minors, R v Harper, [1989] 2 All E R 208. Court of Appeal (Criminal Division) [U.K.] Coram: Watkins L.J., Bush and Steyn JJ. <http://www.swarb.co.uk/c/cacd/1988r_minors.html>

computers were obviously not suited to deal with the kind of situation brought about by the computers. Those laws recognised documents, which are paper-based evidence. Though documents also could be tampered with or forged etc., expertise has developed in this area to prove documents and the courts appear to be comfortable with relying on documents in most cases. Documentary evidence is therefore considered safe to rely on if it becomes necessary to approach a court of law for enforcing claims. The Information Technology Act, 2000 has, to a great extent dealt with many issues that arise in placing reliance on computer data.

1.4 Accuracy and authenticity of data are critical to any business transaction. Equally critical is the requirement that the data remains intact and unaltered. Unless the data sought to be relied on is unaltered, it would not be in the interest of justice for a court of law to pass an order on the basis of the same. This is an attempt to examine the recent changes carried out in the law to facilitate proof of electronic records and computer out-puts in courts of law.

Proof of Documents.

2.1 Section 3 of Indian Evidence Act, 1872 (the Evidence Act) defines the expression ‘document’ as under.

“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.”

2.2 Theoretically, the hard disc or any storage medium used by a computer could be regarded

as the 'substance' on which any matter is expressed or described by means of 'marks', intended to be used for the purpose of recording that matter. As such, the hard disc or other storage medium used by a computer could be regarded as a document. To see how the contents of a document are proved, it is necessary to go through the provisions of Sections 61 to 65 of the Evidence Act. Contents of documents may be proved² either by primary or by secondary evidence.

Primary Evidence

2.3 Primary evidence means³ the document itself produced for inspection of the court. Documents must be proved⁴ by primary evidence except in the circumstances mentioned in Section 65 of the Evidence Act. It is thus clear that production of the hard disc or other storage medium used by a computer in the court would not in any way help prove the contents of the same as they cannot be read by humans without the help of computers. This rules out the possibility of proving the contents of the storage medium or memory of computers by primary evidence as recognised by the Evidence Act.

Secondary Evidence

2.4 The next question is what is secondary evidence and whether contents of computer memory may be proved by secondary evidence. An inclusive definition⁵ has been provided for the expression 'secondary evidence'. It includes, *inter alia*, certified copies issued under the provisions of the Evidence Act and copies made from the originals by mechanical process which in themselves insure the accuracy of the copy. The circumstances under which secondary evidence relating to documents may be given, do not

include, the circumstances relevant to the contents of computer hard ware. It would be too far fetched to press into service the provisions of section 65(d) of the Evidence Act under which, where the original is of such a nature, as not to be easily movable, secondary evidence may be admitted⁶. It may therefore be concluded that it is not possible to prove the contents of computer memory by applying the standards of proof laid down in Sections 61 to 65 of the Evidence Act and that some other specific provisions are necessary.

Information Technology Act, 2000 [IT Act]

Digital signature

3.1 IT Act and the amendments inserted by that Act in the Evidence Act and Bankers' Books Evidence Act, 1891 offer some solutions in this regard. IT Act provides for authentication⁷ of electronic record by affixing digital signature. It also lays down that authentication of electronic record shall be effected by the use of asymmetric crypto system and hash function which envelope and transform the initial electronic record into another electronic record and explains how the electronic record becomes computationally infeasible to alter or tamper after the affixation of the digital signature. Section 73A inserted⁸ in the Evidence Act, deals with proof of digital signature and provides that the court may direct the subscriber, Controller or Certifying Authority to produce digital signature certificate to ascertain whether the digital signature is that of the person by whom it purports to have been affixed. Unless contrary is proved, court shall presume⁹ that secure electronic record with digital signature is not altered. It is thus made legally feasible to enter into contracts by using the electronic medium and establish the same in courts.

This takes care of the transactions entered into by affixing digital signature.

Proof of Computer Out-puts

3.2 Provision is also made to facilitate proof of information stored in computers without digital signature. Since computers were being used in business including banking, even before the coming into force of the IT Act, there is a huge amount of electronic data [which could affect the rights and liabilities of parties] stored in the electronic medium. Section 65B¹⁰ of the Evidence

2. Section 61, Indian Evidence Act, 1872.

3. Section 62 *ibid*

4. Section 64 *ibid*

5. Section 63 of the Evidence Act

6. Section 65 *ibid*

7. Section 3 of IT Act.

8. By Section 92 read with the Second Schedule to IT Act.

9. Section 85B of Evidence Act inserted by Section 92 read with the Second Schedule to IT Act.

10. Inserted by Section 92 read with the Second Schedule to IT Act.

Act lays down *inter alia*, the following conditions to be fulfilled for admitting computer out-puts in evidence.

- (i) Computer was *regularly used* during the period for storing, processing etc., the information by the *person having lawful control* of the computer
- (ii) Information was regularly fed in the *ordinary course of the said activities*
- (iii) Computer was *operating properly*, if it was not, *it did not affect the electronic record or accuracy of its contents*
- (iv) Information contained in electronic record is reproduced or derived from information fed into the computer in the ordinary course of the said activities.

3.3 It may be noticed that for admitting computer out-puts in evidence, it is not stipulated that digital signature should have been affixed to the electronic data. The intention appears to be to allow the use of the electronic data without digital signature also, if the above requirements are fulfilled.

Best of Knowledge and Belief

3.4 When information is stored in the computer over a period of time, with the ground realities like hanging of computers, crashing of hard discs, bugs and viruses, to name only a few, it would have been impossible to prove that computer was operating properly. To prove that the data is not affected by malfunctioning also would have been difficult with different personnel handling it at different times. This difficulty is also sorted out by Section 65B of the Evidence Act which provides that a certificate of a responsible Officer to the above effect to the best of his knowledge and belief is sufficient.

Bankers' Books Evidence Act, 1891

3.5 Suitable amendments¹¹ have been carried out in the Bankers' Book Evidence Act, 1891.

Section 2(8) of Bankers' Book Evidence Act includes in the definition of the expression 'certified copy', print-outs of data stored in any electro-magnetic data storage device. Section 2A thereof lays down that the principal accountant or branch manager should issue the certificate to the effect that it is a print-out of the entries stored in the computer. It should be accompanied by a certificate of the person in charge of the computer system mentioning the particulars listed in Section 2A(b). The certificate issued to the best of the knowledge and belief¹² of the person issuing the said certificate regarding the proper functioning of the computer is sufficient.

English Case Law

4.1 Indian case law has not yet developed on the interpretation of Section 65B. The common Judgment of the Court of Appeal, Criminal Division, (UK) in *R v. Minors* and *R v. Harper* and the subsequent Judgment of the House of Lords in *R v. Shepherd*, which examined the provisions of UK Act, which are almost similar to Section 65B, would be of help for dealing with cases that may arise in future in India.

R v. Minors

4.2 It was alleged that the accused tried to draw a sum of £ 250 from an account in a building society by producing a passbook, showing a balance of £ 510. The actual amount in credit in that account was only £ 1. According to the building society, the last four entries in the passbook were false. The accused was charged with the offence of attempted deception and using false instrument. The account was maintained by the building society in computer. As such, computer print out of the account maintained in the computer was produced in evidence. Section 69 of the Police and Criminal Evidence Act, 1984 (UK) read as under :

"(i) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown – (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer; (b) *that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was*

11. Amended by Section 93 read with the Third Schedule to IT Act.

12. Section 2A(c) of Bankers' books Evidence Act inserted by Section 93 read with the Third Schedule to IT Act.

not such as to affect the production of the document or the accuracy of its contents; and (c) that any relevant conditions specified in rules of court under sub-section (2) below are satisfied.” [Emphasis added]

4.3 Part – II of Schedule –III of that Act which supplements Section 69 read as under :

“8. In any proceedings where it is desired to give a statement in evidence in accordance with Section 69 above, a certificate – (a) identifying the document containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; (c) dealing with any of the matters mentioned in sub-section (i) of Section 69 above; and (d) *purporting to be signed by a person occupying a responsible position in relation to the operation of the computer, shall be evidence of anything stated in it; and for the purposes of this paragraph it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.* [Emphases added]

4.4 The accused was convicted of the offence after an auditor in the Audit Investigation Department of the building society produced the computer record of the complete history of the account of the accused in which the last four entries in the passbook were not recorded. The said auditor had 14 years’ relevant experience and had regularly worked with the computer in question. As such, he was considered as qualified to testify as to the reliability of the computer by the trial court. The Court of Appeal observed that the computer out-put is ‘hearsay’ evidence and before admitting it in evidence, the trial court was required to hold a trial in a trial to see whether the circumstances necessary for admitting such evidence were existing in this case and that the trial court had to rule on the admissibility of the computer out-put in evidence before placing reliance on it. However, it upheld the conviction as the auditor and the manager, had both testified that the last four entries in the pass-book produced by the accused were false because those entries had hand drawn logo [which was quite apparent from the pass-book itself] instead of an official

stamp.

4.5 Though the conviction in this case was not justified solely on the basis of computer out-put, but by the evidence of the auditor and the manager regarding the false entries in the passbook, the following observations of the Court need to be noted :

“The law of evidence must be adapted to the realities of contemporary business practice. Mainframe computers, minicomputers and microcomputers play a pervasive role in our society. Often the only record of a transaction, which nobody can be expected to remember, will be in the memory of a computer. The versatility, power and frequency of use of computers will increase. *If computer output cannot relatively readily be used as evidence in criminal cases, much crime (and notably offences involving dishonesty) will in practice be immune from prosecution.*” [Emphasis added]

R v. Harper

4.6 The appellant was travelling on a London Regional Transport bus. She presented a Capitalcard and photocard for inspection. The Revenue Protection Official identified the number of the card as one of a list of stolen cards. She stated that she got the card from Edgware Road station and that her work got it for her. It was shown that a batch of cards was stolen at Alexandra Palace Railway Station and that appropriate entries were made in the ‘lost book’ at that station. That book was not produced at the trial. It was, however, shown that the entries in that book had been transferred to a British Rail Computer at the British Rail Station at King’s Cross. From that computer, the entries had been transferred to a London Regional Transport Computer at Waterloo. The prosecution relied on a computer print out from the last computer at Waterloo. A Revenue Protection Official who was not a computer technologist produced the print out. She said that she had no reason to doubt the reliability of that computer and that she regularly relied on print outs from it. The Trial Court convicted the accused. But the Court of Appeal held that without the computer evidence there was no over whelming evidence to hold her guilty of the offence of handling stolen goods.

4.7 It is interesting to note that the fact of the loss of the cards was initially recorded in a book and the entries were transferred to a computer from that book which indicates that the entries made in the computer were not original entries. They were copied from a book. Without production of that book, the report of the loss of the cards could not be proved. There could have been mistakes in copying from the book to the computer. Though the computer was functioning properly, the source from which the information was fed into the computer, namely, the 'lost book' had to be produced or there should have been good grounds for dispensing with its production. In the facts and circumstances of this case, the computer out-put was not accepted in evidence. It is submitted that if such evidence were accepted, the standard of proof that is traditionally required to convict a person of a crime could be gravely affected exposing innocent persons to punishment. The Court of Appeal, therefore, rightly quashed the conviction.

*R v. Shepherd*¹³

4.8 The appellant was suspected of committing theft of goods from a departmental store. She was arrested in her home. Her car contained a few goods from the departmental store, in respect of some of which, she had no receipt. She maintained that she had bought the goods and that she never kept receipts and denied theft. A store detective employed at the branch store, stated in her evidence that she had removed all the till rolls for the day in question from the tills which were linked to the central computer and examined all of them. There was no trace of the payments towards some of the items found in the appellant's car. She described in her evidence, how the tills operated and what the central computer did. She said that there was no trouble with the computer and it showed no evidence of malfunctioning either by the tills or by the central computer. Objection for accepting her evidence on the ground that she was not a person responsible for the operation of the computer was turned down and the appellant was convicted of the offence.

Who may Testify?

4.9 The House of Lords referred to the observations in *R v. Minors (Supra)* that to the extent a computer is used to perform functions of calculations, question of hearsay does not arise. The computer in this case was of the simplest kind; printing limited basic information on each till roll. The store detective was able to describe how the tills operated and what the computer did. The House of Lords agreed with the Court of Appeal that the store detective was fully qualified to give the evidence. The House of Lords further clarified that the oral evidence of a person familiar with the operation of the computer who can give evidence of its reliability is sufficient and such a person need not be a computer expert.

Position in United States

5.1 In the United States, the courts appear to have had more occasions to deal with admission of computer out-puts as evidence. Computer Crime and Intellectual Property Section, Criminal Division of United States, Department of Justice, has issued¹⁴ a manual in July 2002, containing guidelines for Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations. Chapter-V of that manual analyses the American case law and offers valuable guidance. The position elucidated in that manual may be summed up as under.

Records of regularly conducted activities

5.2 A memorandum, report, record or data compilation made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, is admitted as evidence if it was the regular practice of that business to make such memorandum, etc. It should be corroborated by the testimony of the custodian or other qualified witness. Unless there is any indication raising doubts, such records may be admitted in evidence.

Computer Generated Record

5.3 Computer generated records contain the output of computer programmes untouched by human hands. Login records from Internet service providers, telephone records and ATM receipts are examples of computer-generated records.

13. [1993] 1 All E R 225

14. http://www.cybercrime.gov/s&smanual2002.htm#_VD2

The authenticity of the computer-generated records depends upon the functioning of the programme which generated it. In most cases, the reliability of a computer programme is established by showing that the users of the programme actually do rely on it on a regular basis in the ordinary course of business. Once a minimum standard of trustworthiness is established, the question as to the accuracy of the computer records, may affect the weight of the evidence and not admissibility¹⁵.

Computer Stored Records

5.4 E-mail messages, word processing files and Internet chat room messages are illustrations of computer-stored records. In case of computer stored records containing human statement, it must be shown that those human statements are not inadmissible hearsay.

Computer Generated and Stored

5.5 A third category of computer record exists and they are both computer generated and computer stored. While the computer programme may produce the output, human hands may put the input. A simple example is the results produced by a spreadsheet like programme on the basis of the figures entered by human beings. In such cases it has to be shown that the information fed in was not hearsay and that the programme was functioning properly.

Challenge to Computer Record

5.6 The authenticity of computer record is usually challenged in one of the three forms, namely, –

- (i) whether the records were altered, manipulated or damaged after they were created;
- (ii) is the computer programme that generated the records reliable and
- (iii) is the identity of the author established.

5.7 In the absence of specific evidence to the effect that tampering occurred, the mere possibility¹⁶ of tampering does not affect the authenticity of the computer record. The existence of an airtight security system to prevent tampering is not a pre-requisite to the admissibility of a computer printout. If such a pre-requisite did exist, it would become virtually impossible to admit computer-generated records.

5.8 Internet technology permits user to send anonymous mails. As such, identity of the author has to be established by circumstantial evidence. In *United States v. Simpson*¹⁷, the accused was conversing with an undercover FBI agent in an internet chat room, devoted to child pornography. During the chat he told the agent his real name and home address. Though he was chatting in the name of “Stavron” the circumstantial evidence was held sufficient to identify the accused.

Conclusion

6.1 It may be safely concluded that electronic records authenticated by digital signatures are easy to prove compared to other electronic records, which are not authenticated by digital signatures. However, computer-generated or computer stored records which are not authenticated by digital signatures, also may be admitted in evidence if court is satisfied that the electronic record in question is unaltered after its creation and that the author of the same is clearly identified.

6.2 There cannot be any hard and fast rule in this regard. In the facts and circumstances of each case, the court will have to evaluate the evidence on record and come to its own conclusion as to whether the computer out-put in question is reliable and as such admissible in evidence. The information stored in the computer even before the coming into force of the IT Act would also be useful in this regard, provided, it can be established that the information stored is unaltered and that there is no difficulty in identifying the author.

6.3 It is hoped that the Indian case law will also develop in future on the lines of the case law in UK and USA and take into consideration the practical aspects of proving computer records to facilitate proper use of computers in business including banking and finance.

15. *United States v. Catabran*, 836 F.2d 453, 458 (9th Cir.1988)

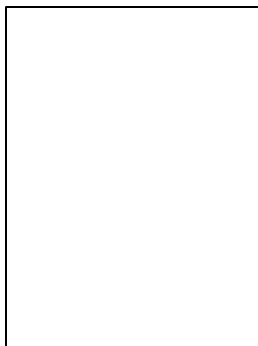
16. *United States v. Glasser*, 773 F.2d 1553, 1559 (11th Cir.1985). Also *United States v. Allen*, 106 F. 3d 695, 700 (6th Cir.1997)

17. 152F.3d 1241 (10th Cir.1988)

GUEST COLUMN

STRENGTHENING THE LAWS CONCERNING CORRUPTION

Hon'ble Justice Arvind V. Savant (Retd.)



Justice Savant is a renowned jurist and a Senior Advocate of the Supreme Court. He is also currently the chairperson of the Maharashtra State Human Rights Commission. In the past, he has held with distinction the high offices of the Chief Justice of the High Court of Kerala and Judge of the High Court of Bombay and decided many cases of public importance with great legal acumen and an outstanding sense of justice. In this column, Justice Savant has shared with RBI Legal News and Views his views on the present laws relating to prevention of corruption and the measures for strengthening these laws for curbing the menace of corruption effectively.

(1) It is an unfortunate fact of life that corruption has become a world phenomenon. However, it would be wrong to accept this as a way of life and be complacent in taking measures to eradicate the cancer of corruption. I am confining my comments to the topic of “strengthening the law concerning corruption.” This topic has to be considered in the light of the question whether the present law is sufficient to combat the menace.

(2) It is well settled that a legislation to be effective has either to be respected by the society at large, or the society has to fear such a legislation. Assuming that there is sufficient respect in the society for the Prevention of Corruption Act, 1988 (for short, “Act”), it is doubtful where the Society fears this Act. In my view, the present law providing minimum sentence of six months in some cases and one year in some other cases needs to be suitably amended. Even the maximum sentence of five years in some cases and seven years in other cases needs to be suitably enhanced.

(3) In this behalf, my suggestions are as under :

- (i) Under section 7 dealing with “public servant taking gratification other than legal remuneration in respect of an official act,” the minimum sentence is six months and maximum is five years with fine. In my view, minimum sentence should be enhanced to two years and maximum can be retained at five years with a fine. The amount of fine should, however, be substantial, commensurate with the gravity of mis-conduct of the erring public servant.
- (ii) Under section 8 dealing with “taking gratification, in order, by corrupt or illegal

- means, to influence public servant”, the minimum sentence is 6 months and the maximum is five years with fine. On par with the suggestion regarding amendment of section 7, the minimum sentence should be enhanced to two years and the maximum can be retained at five years, with substantial amount of fine as indicated in (i) above.
- (iii) Under section 9 dealing with “taking gratification, for exercise of personal influence with public servant”, the minimum sentence is six months and maximum is five years with fine. As suggested above, the minimum should be enhanced to two years and maximum can be retained at five years with substantial amount of fine.
- (iv) Under section 10 dealing with “punishment for abetment by public servant of offences defined in Section 8 or 9”, the minimum sentence is six months and maximum is five years with fine. The minimum should be raised to one year whereas the maximum can be retained at the present limit.
- (v) Under section 11 dealing with “public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant”, the minimum is six months and maximum is five years with fine. The minimum should be raised to two years and maximum can be retained at five years with substantial amount of fine.
- (vi) Under section 12 dealing with punishment for abetment of offences defined in section 7 or 11, the minimum sentence is six months and maximum is five years with fine. The minimum should be raised to one year and maximum can be retained at five years with substantial amount of fine.
- (vii) Under section 13 dealing with “criminal misconduct by a public servant”, there are various types of misconducts. Clauses (a) and (b) of sub-sec.(1) deal with habitual misconduct of the type specified therein by a public servant. Clause (c) deals with dishonest or fraudulent misappropriation by a public servant in respect of the property entrusted to him. Clause (c) deals with dishonest or fraudulent misappropriation by a public servant in respect of the property entrusted to him. Clause (d) deals with other kinds of misconducts and Clause (e) deals with a public servant being found in possession of property disproportionate to his known sources of income. Unfortunately, under sub-section (2) of section 13, the minimum sentence is uniform viz. only one year and maximum is seven years with fine. In my view, minimum sentence should be immediately raised to three years and maximum should be raised to ten years with substantial amount of fine which must necessarily be commensurate with the gravity of misconduct.
- (viii) Under section 14 dealing with “habitually committing offence under sections 8, 9 and 12”, the minimum sentence is two years and maximum is seven years with fine. In my view, this should be raised to minimum of four years and maximum of ten years with a substantial amount of fine.
- (4) Another important amendment which, in my view, is immediately necessary is on the lines of

the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, SAFEMA). A provision must be made in the prevention of Corruption Act, 1988 similar to Sec. 7 of SAFEMA authorising forfeiture of properties illegally acquired as a result of misconduct by a public servant. There must also be a law prohibiting holding of illegally acquired properties by a public servant similar to Section 4 of SAFEMA. In this behalf, it might be easier to amend Section 2 of SAFEMA dealing with persons to whom provisions of SAFEMA apply. Under Sec. 2 (2) of SAFEMA there is a list of persons to whom provisions of SAFEMA apply. They include clause (a), (b), (c), (d) and (e). Such a person may be a person convicted under the Sea Customs Act, 1878, the Customs Act, 1962, the Foreign Exchange Regulation Act, 1947, the Foreign Exchange Regulation Act, 1973 or the Conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974 or a relative of a person referred to in clauses (a) or (b) of sub-sec. (2) or an associate of a person referred to in clauses (a) or (b) or any holder of any property which was previously held by persons referred to in clauses (a) or (b) of sub-sec. (2) of Sec. 2 of SAFEMA subject to the exclusion of a bonafide transferee for adequate consideration. In my view, an amendment can be inserted in sub-sec. (2) of Section 2 of SAFEMA to the effect that the said provisions of SAFEMA would also apply to a person convicted under the Prevention of Corruption Act, 1988. This should be done at the earliest.

(5) Another area which needs a fresh look is the provision contained in Section 19 of the Prevention of Corruption Act, 1988 requiring previous sanction to be obtained for taking cognisance of an offence punishable under sections 7, 10, 11, 13 and 15

of the Act. If the preliminary enquiry against the public servant shows that his case falls under one or more clauses of Sec. 13(1) of the Act, in my view, no further time should be spent in obtaining the previous sanction which leads to further litigation on the question as to either sanction ought to have been granted or not. If a person is found in possession of property disproportionate to his known sources of income and this fact is prima facie established during the enquiry, it may not be necessary to spend further time for obtaining previous sanction which itself is a dilatory process. The delay in taking up the corruption cases for trial invariably results in witnesses not being available, witnesses forgetting the crucial facts; witnesses, at times, dying or leaving the country making it difficult for the prosecution to prove even a genuine case for want of adequate and reliable evidence.

(6) Yet another amendment which can be considered is on par with Sec. 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 making it difficult for the Court to grant bail in cases where a prima facie case made out under the Prevention of Corruption Act, 1988. At any rate, a provision should be made in the Prevention of Corruption Act, 1988 that no person accused of an offence punishable under the Prevention of Corruption Act, 1988 should be released on bail unless the public prosecutor has been given an opportunity to oppose the application for such release and the Court records reasons for the grant of bail.

(7) Lastly, there ought to be some time limit prescribed for deciding the cases under the Prevention of Corruption Act. This would of course, require sufficient number of Courts being established with competent Judges to take up

those cases on a priority basis. We also need trained Investigating Officers and Prosecutors to ensure that the case is presented properly and relevant witnesses are examined in the shortest possible time. The Apex Court has laid down in Raj Deo Sharma's case (A.I.R. 1998 Supreme Court 3281, that it is necessary in the interest of justice to establish sufficient number of special courts to try cases involving offences under the

Prevention of Corruption Act, 1988 on priority basis. These directions were reiterated in the Second Raj Deo Sharma's case reported at 1999 A.I.R.S.C.W. 3522 subject to certain clarifications.

(8) In my view, therefore, amendments suggested in paras 3 to 7 above should be immediately incorporated in the Prevention of Corruption Act, 1988 with a view to strengthening the said Act.

Europeans distrust the Russians even more than do the Americans. But there is little sign that true unity on trade, monetary affairs, defense spending or even diplomatic consultations about political problems will emerge quickly. For example, during the recent Mideast war, Mr. Kissinger said: "It is a root fact ... that the countries that were most consulted proved among the most difficult in their co-operation".

Causes of this disarray are several, and there is blame enough for everyone. For example, the U.S. sprang its "Year of Europe" plan in a New York speech by Mr. Kissinger, without prior private talks with Europeans — or even with the State Department (Mr. Kissinger was then in the White House). This bruised many Continental dignities and soured the atmosphere from the very beginning.

— KEATLEY, Robert, "Uneasy Alliance" in *The Wall Street Journal*,
December 10, 1973, P. 1, col. 1

A conviction is something that can be discussed without anger, (as opposed to a prejudice).

— McGEE, Frank, on *Today*, NBC, November 2. 1971