REPORT OF THE COMMITTEE
ON
LEGAL ASPECTS RELATING
TO
OPERATIONS OF BANKING AND FINANCIAL SYSTEM

1992

RESERVE BANK OF INDIA
BOMBAY

CONTENTS

LIST OF ANNEXURES

भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA

विधि विभाग

23वी मंजिल, नवीन केन्द्रीय कार्यालय भवन,
शहीद भगत सिंह मार्ग, पोस्ट बॉक्स सं. ४०६,
बम्बई नं ४०० ०२३.

संदर्भ एल. डी. सं. _____

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Date 27/03/92

Ref. L. D. No. 5004/92/B

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The Governor,
Reserve Bank of India,
Bombay.

Dear Sir,

Committee on legal aspects relating to operations of banking and financial system.

I have the pleasure in submitting the report of the above Committee appointed vide Memorandum dated 6th January 1992. I am happy to record that the members of the Committee have shared their rich experience and expertise in the field of law during the deliberations of the Committee.

Yours faithfully,

(V.G.Hegde)
Principal Legal Adviser
(Chairman)

ACKNOWLEDGEMENTS

1. The Committee is grateful and expresses its thanks to Smt. Usha Thorat, Joint Chief Officer, Industrial and Export Credit Department, Reserve Bank of India, Shri Batra, Joint Chief Officer, Department of Banking Operations and Development, Reserve Bank of India, Shri G.M. Ramamurthy, Joint Legal Adviser, Industrial Development Bank of India and Shri K.Mohandas, Assistant General Manager (Law), State Bank of India for attending some of the meetings of the Committee as Special Invitees and sharing information and their experience with the Committee.

2. The Committee also owes its thanks to the Department of Banking Operations & Development, Reserve Bank of India, Central Office, Bombay and Kum. Nargis Khambatta, General Manager (Law), Bank of India for making available to the Committee very useful material.

3. The Committee gratefully acknowledges that it has heavily drawn on the material contained in the reports of several Committees, a mention of which has been made in the body of the Report itself.

4. The Committee is happy to place on record its warm appreciation of the splendid work done by Shri G.S.Hegde, Assistant Legal Adviser, Reserve Bank of India who acted as its Secretary. He organised the meetings, processed volumes of material, prepared the first draft of the report and provided all other secretarial assistance. Committee is indeed thankful to him.

CHAPTER I
INTRODUCTION

1.1.1 Preliminary

INDIA is at the threshold of a new era of major economic changes. Naturally, the banking and financial system will be called upon to make its contribution in a big way. The system therefore has to develop fast adequate dynamics to meet the new challenges. Towards that end, the reforms recommended by the Narasimham Committee are being studied for a phased implementation. Another area that needs immediate re-look falls in the realm of extant legal frame-work within which the banking and financial system has to function and operate. In fact, the legal problem besetting banks and financial institutions is as old as it is complex. It has engaged the attention of several committees in the past but has defied easy, ready and neat solution.

1.2.1 Cycling Of Funds

The Narasimham Committee on the financial system has stressed the need for improving the recovery of dues owed to banks and financial institutions for the overall development of the economy. The recovery of overdues is as vital for the growth and profitability of banks and financial institutions as is the need for recycling of funds for general economic development. Imperatives of speedy recovery of over dues do not require any separate justification. For quite some time, Government of India and the Reserve Bank of India have been concerned about the strategies to be worked out for improving the recovery and expert groups have been appointed from time to time to examine the same. With the objective of identifying the areas and methods for improving the recovery performance of banks and to ensure proper control over overdues, Bankers' Training College, Reserve Bank of India conducted a Seminar on "Recovery Management" in September 1988. Experts in the field presented papers, discussed and made useful recommendations, which have been published.

1.2.2 Talwar Committee

The Talwar Committee appointed by the Reserve Bank of India in September 1[illegible] submitted its report in 1970 alongwith a draft of the Bill to be enacted by various S[illegible] Governments. That Committee addressed itself to the problem of creation of security on agricultural lands and recovery of agricultural loans. The model bill suggested by it has been enacted by some State Governments. However, this has not in itself solved the position of recovery, particularly, in respect of other categories of loans granted by banks and financial institutions.

1.2.3. Banking Laws Committee

The Banking Laws committee appointed by Government of India as a one man Committee under the Chairmanship of Dr. P.V. Rajamannar, retired Chief Justice of the High Court of Madras submitted its reports on Personal Property Security Law and Real Property Security Law in the Year 1977. The report on the Personal Property Security Law governs the law relating to loans and advances by banks, hire purchase and other financial institutions against stock - in -trade, accounts receivables, other types of goods like machinery and fixtures, crops, documents of title to goods and instruments. The report on the Real Property Security Law reviews mainly the mortgage law, legal framework pertinent to investigation of title, etc,. Radical changes in the existing legal framework suggested by the Committee have not yet been implemented.

1.2.4 Tiwari Committee

Reserve Bank of India appointed in 1981 a Committee under the Chairmanship of Late Shri T.Tiwari, the then Chairman of the erstwhile Industrial Reconstruction Corporation of India Ltd. Calcutta, to examine the legal and other difficulties faced by banks and financial institutions in rehabilitation of sick industrial undertakings and to suggest remedial measures including changes in the law. The Tiwari Committee submitted its report in 1984 and suggested among others, the setting up of Special Tribunals to deal with the recovery of the dues of banks and financial institutions. The broad outlines for the constitution and functioning of the Special Tribunals was also furnished by the Tiwari Committee.

1.2.5. Vesuvalla Committee

The Vesuvalla Committee submitted in 1986, the draft of the Bill called " Recovery of Dues (Public Sector Banks and Financial Institutions) Bill, 1986.". That Bill also contains provisions for setting up of Tribunals to take care of the recovery problems of banks and financial institutions in respect of claims above Rs. 50 lakhs. The Bill is still in the process of being examined at various levels.

1.3.1 Present Scenario

In the context of the emerging scenario consequent on the liberalisation in trade and industrial policy, lending entities like banks and financial institutions would, hereafter, be called upon to play their role in a free market environment. It became necessary to look into the existing legal framework relating to banking and financial system with reference to the lending operations, collateralisation, realisation and recovery, in the light of the recommendations already made by the various Committees appointed in the past.

1.3.2. This Committee

This Committee has been appointed by the Governor, Reserve Bank of India, vide memorandum dated 6th January 1992 under the Chairmanship of Shri V.G.Hegde

Principal Legal Adviser, Reserve Bank of India, Bombay, consisting of the following members :-

1. **Shri V.G.Hegde** .. **Chairman**
   Pr. Legal Adviser
   Reserve Bank of India
   Bombay.
2. **Shri M.L.Bhakta** .. **Member**
   Senior Partner M/s Kanga and Co.
   Solicitors, Bombay.
3. **Shri J.Radhakrishnan** .. **Member**
   General Manager (Law)
   State Bank Of India
   Bombay
4. **Shri G. Sreerama Murthy** .. **Member**
   Legal Adviser, Industrial Development
   Bank Of India (IDBI)
   Bombay.
5. **Shri V.K. Shah** .. **Member**
   Law Officer
   Indian Banks Association
   Bombay.
6. **Shri P.Sri Sai Ram*** .. **Member**
   General Manager (Law)
   Industrial Reconstruction
   Bank Of India
   Calcutta.

* **Shri P. Sri Sai Ram** was co-opted as an additional member of the above Committee in the Third Meeting of this Committee held in the Reserve Bank of India, Bombay on 5th February 1992

1.3.3. Terms Of Reference

Terms of reference of this Committee are as under.

i) To examine the existing legal framework relating to banking and financial system with particular reference to their lending operations, collateralisation, realisation and recovery;

ii) To suggest necessary amendments to the existing legal framework with a view of improving the efficacy of the legal machinery in that regard;

iii) To examine legal provisions relating to the functioning and operations of banking and financial system in the light of the relevant recommendations of various Committees as also those of the Narasimham Committee and to suggest improvements in the existing provisions with a view to bringing about the required efficiency.

A copy of the memorandum dated 6th January 1992 appointing the Committee is enclosed as Annexure.1.

1.3.4. The Task

The task of the Committee is rendered easy by the wealth of available material on the subjects to be considered by it. Even so, this Committee's task is of a different quality in that, it has to,

(a) diagnose the ailment which affects the growth and profitability of banks and financial institutions;

(b) consider more appropriate cure in the changed environment and;

(c) prescribe the right remedy, with a proper mix and suitable modification, although largely based on available material, so that they may play their rightful role in the changed economic order.-

1.3.5 Methodology

The methodology adopted by the Committee to deal with the above terms of reference included compiling of the relevant recommendations made by the various Committees appointed in the past and studying the same to find out their relevance and utility in the changed environment as also having a close look at the recent judgments of different Courts having a bearing on the subject. The Committee took note of the practical problems of banks and financial institutions. Illustratively, it had discussions with officials of Industrial and Exports Credit Department, Department of Banking Operations and Development, Reserve Bank of India, Bombay to have first hand information about the functioning of the Board for Industrial and Financial Reconstruction and the Appellate Authority for Industrial and Financial Reconstruction constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 (Act No. 1 of 1984). It gathered statistical information about suits in Courts and decrees which remain still to be executed.

1.3.6 The Committee also had the advantage of knowing the views of the Legal Advisers of the Financial Institutions as IDBI convened a meeting of the Sr. Legal Executives of the Financial Institutions in Bombay on 25th January 1992 and submitted to the Committee, the outcome of the discussions of the said meeting,for the consideration of the Committee. State Bank of India representing the interest of banks, submitted a note regarding difficulties faced in the present day set up in realisation of securities. In the light of the material gathered from time to time,the Committee held eight meetings and discussed the reforms that could be suggested in the present day legal framework for making recovery of dues of banks and financial institutions more simple, practicable and result- oriented.

The Committee also pondered over problems of long term nature besetting these lending economic entities to find out the ways and means of removing the impediments which inhibit their operational efficiency.

1.3.7. Scheme of the Report

This report attempts to look at the existing legal framework for creation and enforcement of non-possessory securities created on movable and immovable properties. It refers to the recommendations having a bearing on the above terms of reference made by the various Committees appointed in the past and suggests certain statutory and non-statutory reforms. The statutory reforms suggested by this Committee are of two categories, namely -

(a) Short term reforms of setting up of Special Tribunals and creation of second tier of Recovery Officers for recovery of the dues of banks and financial institutions; and

(b) Long terms reforms providing for the right of seizure or repossession and the right of private sale of the securities.

While this report does not furnish any draft legislation, it sets out the ingredients which need to be incorporated therein. Also, the report outlines the non-statutory voluntary measures which, if pursued vigorously, can also go a long way in improving the situation.

CHAPTER-II
SHORT TERM SPECIAL MEASURES

2.1 No Separate Forum At Present

Banks have to approach the Civil Courts for recovering their dues. The scope for recovery under certain State legislations is limited. The recovery by co-operative banks under the Cooperative Societies Acts is marginal and not comparable to the huge amounts of other banks locked up in court litigation. Except State Financial Corporations, Industrial Financial Corporation and Industrial Reconstruction Bank of India, which are corporations constituted under the specific statutes which contain provisions for a simpler mode of recovery of their dues, other financial institutions have to take recourse to Civil Courts for recovering their dues. Annexure 2 contains the observations made by the Tiwari Committee in para. 8.2 of its Report, regarding the hardship faced by banks and financial institutions in this regard. The Committee has been informed that as per the statistics available in Reserve Bank, as on 31st March 1991, 7,69,635 suit filed accounts of public sector banks involving a sum of Rs. 3,260.65 crores were pending and a sum of Rs. 757.86 crores was outstanding in 4,46,018 decreed accounts. Not only does the amount involved in the large number of claims cause concern, but also the time taken under the normal procedure to recover the dues thereof.

2.2 Courts' Delays

One of the major causes for delay in the recovery of dues of banks and financial institutions is the delay involved in the Court procedure. There are many causes for the delay in the Courts. The following are a few of them.

i) The technical rules of evidence followed by the civil Courts.

ii) The provisions for appeals and revisions at different stages of the suit, appeal and execution.

iii) Intentional delaying tactics adopted by the borrowers by taking undue advantage of the procedures of the Civil Courts.

iv) The banks and financial institutions have to wait in the queue for their turn along with other litigants on account of backlog of different kinds of suits although their suits are ordinarily for simple money claims and could be disposed of with least possible delay.

The Committee was told that there are no Presiding Officers in some Courts, as the vacancies are not filled up.

2.3 Routine Litigation

The suits filed by banks and financial institutions are generally routine in nature. The documents obtained by them are by and large uniform. In order to obtain a decree on the basis of such simple documents which are routine in nature, the banks and

financial institutions have to undergo the normal procedure of proving the documents, the execution of the documents, the passing of consideration etc.. The defences are taken mechanically by the borrowers and they are also routine and technical in nature in order to gain time by abuse of the process of law. Sometimes, only with a view to delay the proceedings,even the execution of the documents is denied, ignorance of the contents,pleaded, receipt of the consideration, disputed etc,.

2.4 Unnecessary Burden On Judicial Time

After going through the normal procedure of the Civil Courts, in most of the cases, the documents are held proved and decrees are passed. Courts use their discretion and reduce the rate of interest from the date of the suit or the date of the decree, or grant instalments. If an appeal is filed against the judgement and decree, the appellate Court once again appreciates the evidence on record and passes its own order. In this process, there is a heavy toll on judicial time which can be better utilised for deciding more important matters than dealing with the normally routine claims of banks and financial institutions which have advanced moneys to the borrowers. Such unnecessary burden on judicial time needs to be eliminated. That apart, claims of banks and financial institutions which represent loans and advances made out of deposits made by members of public, get stuck up for years, and sometimes the securities deteriorate in value considerably.

2.5 Tiwari Committee

One of the options available for avoiding the same would be, setting up Special Tribunals for dealing with the claims of banks and financial institutions. The Tiwari Committee, set up by Reserve Bank of India has recommended in its report that Special Tribunals may be constituted. Annexure XI to that Report contains the broad outlines of the constitution, procedure etc. of those Special Tribunals.

2.6 Draft Bill

The Vesuvalla Committee in 1986 has provided a draft of the Bill, for the consideration of Government. That Bill, namely Recovery of Dues (Public Sector Banks and Financial Institutions) Bill 1986 is stated to be pending with the Government for implementation. IDBI has also examined that Bill and suggested certain modifications so as to make it more effective from the point of view of banks and financial institutions. IDBI is stated to have forwarded to Government, the modified version thereof,named, the Banking Tribunals Bill, 1991. These Bills are scrutinised by this Committee and they are referred to as proposed legislation in this Report.

2.7 Long Felt Need

The Narasimham Committee has also reiterated the need for the setting up of Special Tribunals for recovery for the dues of banks and financial institutions. Evidently, there is a long felt need for the establishment of Tribunals to deal with the recovery of the dues of banks and financial institutions.

2.8 Constitutionality

The Committee had the benefit of perusing the legal opinion of an eminent constitutional expert on the question whether it would be permissible under the Constitution, for the Parliament to enact a law and set up Tribunals having exclusive jurisdiction for hearing and deciding cases filed by banks for recovery of their dues from the customers by ousting the jurisdiction of the ordinary Civil Courts. The expert's opinion is that, though Article 323 B(2) of the Constitution of India does not specifically include establishment of such Tribunals, the Parliament could set up such Tribunals, for hearing cases filed by banks but such law would not exclude the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India, because such a law is not covered by Articles 323A and 323B. Relevant portion of the said opinion is annexed as Annexure 3. The Committee is also satisfied that setting up of Tribunals for dealing with the recovery of the dues of banks and financial institutions is permissible under the Constitution.

2.9 Short Term Measure

This Committee has considered the entire matter once again at length in the light of the recommendations of earlier Committee,as also in the context of the opening up of the economy consequent on the liberalisation in industrial and trade policy.

2.10 Speaking generally, good lending reduces bad debt. There cannot be two opinions that as quality of lending improves, the bad debt position would progressively and proportionately get reduced. Therefore, in the changed environment and with the implementation of financial reforms recommended by the Narasimham Committee, the banks and financial institutions are expected to have greater internal autonomy,laying right emphasis on quality lending and accountability. It is hoped that the banks and financial institutions would, in the years to come, pay better attention to their lending operations and that the problem of overdues which has been haunting them all these years may not trouble them much in future . Moreover, these lending institutions can, in such an atmosphere, be expected to evolve their own effective mechanism to recover their dues without much recourse to litigative process. But unless and until the heavy and oppressive burden of past overdues is lightened, it may not be possible for these institutions to play an effective role as a vibrant out-fit in the changed economic set up. Thus, while the Committee recognises that the ultimate and lasting solution to the problem of overdues lies with the initiative, the efficiency and commitment of the men who man individual institutions, the Committee is fully convinced of the need for the setting up of Tribunals called Banking Tribunals, at least as a short term measure, so that colossal amounts of dues accumulated over the years could be recovered without much delay and put back into the system for the welfare of the public in general. This Committee has, therefore, no hesitation in saying that the albatross hanging around the neck of the financial system should be removed by a special measure of a short-term nature. The need for setting up of special machinery for recovering the overdues of banks and financial institutions cannot, therefore, be over-emphasised. This Committee recommends accordingly.

2.11 The following are some of the main features to be incorporated in the proposed legislation.

2.11.1 Self Financing

Banks and financial institutions approaching the Banking Tribunals for recovery, may be required to pay a reasonable amount for seeking the assistance of the Tribunal so that the expenses of the Banking Tribunals can be fully met. The idea is that, the establishment of the proposed Banking Tribunals should not be a burden on the Government exchequer and that these Tribunals should financially be self sufficient.

2.11.2 Lean Outfit

The Banking Tribunals should have a limited staff. The Presiding Officer and a few supporting staff should be sufficient. For registering the claims, for issuing notices, processing the papers, making copies of the orders, for issuing certified copies, etc., new technology should be made use of. Care should be taken at the initial stages itself, to ensure that the offices of the Banking Tribunals are fully mechanised and properly equipped, so that speed does not suffer on account of man-made problems.

2.11.3 Presiding Officers

The Presiding Officers should be persons having background in commercial litigation. The Presiding Officers could be appointed from persons qualified to be appointed as District Judges and bank officials with legal background . The upper age limit could be 65 years.

2.11.4 Private Sector Banks

Since ,private sector banks are also dealing with the money deposited with them by the members of the public, this Committee sees no reason to distinguish between public sector banks and private sector banks for covering them under the proposed legislation.

2.11.5 Cut Off Limit

The Vesuvalla Committee had suggested that claims above the sum of Rs. 50 lakhs may be dealt with by the Tribunals. It had suggested Tribunals to be set up in metropolitan cities and the Presiding Officer to be of the rank of the High Court Judge or official of comparable rank. Obviously, the rationale of suggesting such a high limit was that the proposed Tribunals should not be cluttered with large number of claims thereby defeating the objective of speedy recovery to a large extent. While this Committee appreciates the anxiety of the Vesuvalla Committee, it does not share the concern of that Committee that,if the pecuniary limit is lowered, speedy recovery process might get diluted. The proposed Tribunals are, in a short span, expected to specialise and develop the required expertise in handling and disposing of money claims with least delay. The very purpose of setting up Banking Tribunals is to usher in a different culture and perspective in the handling of commercial litigation in a summary way. Moreover, if such

high cut off limit is adopted, quite a large number of claims of banks and financial institutions will go out of the purview of the Banking Tribunals. The precious time and money spent by banks in respect of low value claims is totally disproportionate to the amount involved. Also, to leave the low value claims to be handled by ordinary Civil Courts would be unfair and also counter-productive. The money spent by banks and financial institutions in respect of low value suits is disproportionate to the amount involved and the same also has to be remedied. Further, the legislation can give suitable guidelines to the Banking Tribunals to take up high value claims first, regardless of their date of filing.

2.11.6 Two Tier System And Pecuniary Jurisdiction

At the same time, setting up such Banking Tribunals to handle all claims would be self-defeating. That apart, it might be difficult to find wherewithals for such a gigantic exercise. This Committee is, therefore, in favour of two tier system. The Central Government may set up such number of Banking Tribunals as are found necessary to deal with the claims of banks and financial institutions above a certain limit at such geographical areas as it deems fit. This Committee recommends that the claims above Rs. 5 lakhs should fall within the jurisdiction of the Tribunals. The low value claims i.e. the claims of Rs. 5 lakhs and below may be dealt with by Recovery Officers. It is, therefore, necessary to have a simpler procedure for recovering the smaller dues. Setting up such Banking Tribunals to cover smaller dues also could result in too many Tribunals operating parallel to the judicial system. This could pose difficulties in getting adequate number of suitable personnel for manning these Tribunals. Two tier system is, therefore, proposed. The Central Government may set up such number of Banking Tribunals as are found necessary to deal with the claims of banks and financial institutions above a certain limit at such geographical areas as it deems fit. The low value claims may be dealt with by Recovery Officers. The Recovery Officers may be the bank officials notified as such.

2.11.7 Second Tier

Claims below the pecuniary limit of the Banking Tribunals should be dealt with by these Recovery Officers. The appointment of Recovery Officers may be on the same lines as the appointment of Estate Officers under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. These Recovery Officers who are bank officials may be vested with the powers of determining the amount due from the borrowers after giving them a notice. It may also be provided that in case these officers encounter any difficulties in the discharge of their functions they may refer them to the Banking Tribunals. The proposed legislation may stipulate that the Recovery Officer should not be an officer below a certain rank, say Senior Manager or Divisional Manager or an official of comparable rank. Having regard to the nature of the claims and the small amounts involved, this Committee is of the view that the vesting of such powers in sufficiently high ranking officers, and that too, such powers to be exercised after giving an opportunity to the borrowers to make representation, would not be repugnant to the normal canons of justice and fair play. AIR 1986 AP 115

2.11.8 Procedure

The Banking Tribunals should follow a summary procedure. Civil Procedure Code should not be applicable to the proceedings before the Tribunals. The proposed legislation should provide for certain presumptions to be drawn by the Banking Tribunals for the purpose of dealing with the claims. When there is documentary evidence regarding the passing of consideration or the creation of assets from the loan proceeds or when a regularly maintained account is there between borrowers and the banks and financial institutions, the Banking Tribunals should proceed on the presumption that the documents are executed, the relationship of creditor and debtor exists and the debt is due. Only in exceptional cases, oral evidence may be recorded. Normally, the Tribunals should act on the basis of the documentary evidence before them. The Committee feels that a time bound programme could be stipulated for disposal of the claims and that a period of 180 days from the date of claim should be sufficient. The procedure before the Recovery Officers should be even simpler. A notice may be issued to the borrowers calling upon them why a certificate of recovery for the amount due (to be specified in the notice) should not be issued. Unless the borrower comes up with a specific defence, pointing out the discrepancies in the calculation, etc, the Recovery Officers should be empowered to issue the recovery certificate.

2.11.9 Interlocutory Order

The Banking Tribunals should have powers to issue such interim orders as deemed necessary. They may *inter alia* appoint receivers, issue orders of attachment, seizure, sale, etc,. For obtaining such orders, banks and financial institutions need not be required to prove that the borrower is likely to abscond or alienate properties with intent to defeat or delay the creditors. In the case of smaller claims also, the Recovery Officers should have similar powers. If the recovery officers of banks and financial institutions face any difficulties in attachment, seizure, sale, etc, they should be able to take recourse to the officers attached to Banking Tribunals for executing the orders.

2.11.10 Instalment And Discretion

While the Banking Tribunals or the Recovery Officers may, in deserving cases, have the discretion of granting instalments to the borrowers to repay their dues, the Banking Tribunals and the Recovery Officers should be required to grant contractual rate of interest till repayment.

2.11.11 Multiple Claims

When more than one bank or financial institution has a claim against the same borrower and one of the said institutions refers the matter to its own Recovery Officer, the proposed legislation should provide for the claims of others banks and financial institutions being referred to the Banking Tribunals, if the Recovery Officer is notified of the other claims at any time before the realisation of the dues.

2.11.12 Revisional Remedy

A provision for appeal against the orders passed by the Banking Tribunals or the Recovery Officers would not be useful since they will be following a summary procedure. Further, in such routine litigations, a provision for appeal may have the disadvantage of causing more delay without any purpose being served. As such, a revision to the High Court only on pure questions of law or errors apparent on the face of the record may be provided against the orders passed by the Banking Tribunals or the Recovery Officers so that in genuine cases, the affected party is not left without a remedy. In a different context, the Supreme Court has held in Babubhai & Co. Vs State of Gujarat, AIR 1985 SC 613, that absence of the provision for appeal does not render the law invalid. A Division Bench of the Gujarat High Court has held in Alka Ceramics v. Gujarat State Financial Corporation and others (1992) 73 Comp Cas 209 that Section 29 of the State Financial Corporations Act, 1951 is Constitutional, even though there is no provision for appeal. Still, the Committee felt that, it is reasonable to provide for a revision to the High Court as above against the orders of Banking Tribunals or Recovery Officers. It should also be provided that the High Court may admit the revision petition on such conditions as it deems fit, such as, deposit of the principal amount or furnishing fresh security etc.

2.11.13 Offences

The Committee felt that it could be advantageous to provide for certain deterrent punishment to the borrowers who make false representations and obtain the financial accommodation, or who deal with the securities in a manner detrimental to the interest of the banks or financial institutions or who set up false and vexatious defences before the Banking Tribunals or any other forum. Somewhat similar provisions are in force in Pakistan. Prosecution for such offences should be at the instance of the banks or financial institutions concerned who should invoke this sparingly. The possibilities of the banks or financial institutions prosecuting on selective basis may be sufficient deterrent in this regard. At the same time, the chances of its abuse against innocent parties is also reduced as banks and financial institutions can be expected to act reasonably and not arbitrarily. In any case, they are interested in the recovery of their dues and not in punishing the borrowers.

2.11.14 Recovery

The proposed legislation should have a complete mechanism for recovering the dues of the banks and financial institutions. While these Banking Tribunals or the Recovery Officers, as the case, may be would be determining the amounts due from the borrowers to the banks or financial institutions after following the procedure indicated above, the actual recovery would be possible only when the movable or immovable properties of the borrowers are attached and sold. For this purpose the proposed legislation should provide for appointment of officers to execute the orders of the Banking Tribunals and Recovery officers. Officers of banks and financial institutions may also be appointed as such officers. These officers should function under the overall supervision and control of Banking Tribunals . The Recovery Officers of banks and financial institutions

or the Officers entrusted with the execution of such orders should have the power to issue warrant, attach properties and sell the same either by public auction or by private treaty and to apply the sale proceeds to the dues of the banks and financial institutions, costs incurred, etc. In discharge of their functions, these officers may be required to follow a simple procedure similar to the procedure for attachment and sale of movable property and immovable property contained in parts II and III respectively of Schedule II of the Income Tax Act, 1961.

2.11.15 Complete Code

The Committee recommends that the proposed legislation, should be a complete Code for recovery of the dues of banks and financial institutions. The jurisdiction of civil Courts should be barred and once the proceedings under the proposed legislation have commenced against any borrower, suits, executions and other proceedings of private parties against such borrowers or their assets should not be commenced or continued without the permission of the Banking Tribunals.

CHAPTER III

LONG TERM MEASURES

3.1 SECURITIES - MOVABLE PROPERTIES

Security is created on movable properties in many forms. The most common forms are, pledge, hypothecation, hire purchase and trust receipts. Indian Contract Act contains the law relating to pledges. Since in case of pledge the possession of the movable property in question is given to the creditor and the Contract Act confers on the creditor, the right of private sale, the law relating to pledges is satisfactory. Creditors face difficulties in hypothecation where possession is with the borrowers. Besides, hypothecation is not defined statutorily and the rights and liabilities arising out of the same have also not been spelt out. Since hypothecation is created more frequently than other forms of security on movable property, in favour of banks and financial institutions, it is necessary to look into the law relating to hypothecation in depth.

3.1.1. Present Day Problems

The major problems highlighted during the Committee deliberations are,

(i) the difficulty in taking possession of the stocks/hypothecated properties by the officials of the bank;

(ii) the banks having no control over the borrowers who may dispose of the hypothecated properties without the knowledge of the bank;

(iii) the risk of the stocks being deteriorated due to inaction of the borrowers; and

(iv) the delay in the Courts in obtaining orders for seizure, sale etc.

A few of the above problems could be sorted out if adequate statutory support is provided to the rights and liabilities of the parties to the contract of hypothecation.

3.1.2. Seizure - Concflicting Views Of High Courts

There is strong divergence of opinion among different High Courts on the question whether the creditor has the right to take possession of the hypothecated property in the event of a default by the borrowers. Thus there is an immediate need to define hypothecation and to set out the rights and liabilities of parties to hypothecation so as to confer the right of seizure and sale on the creditor. The need to codify the law relating to hypothecation has been emphasised by the Rajamannar Committee on Personal Property Security Law.

3.2.1 Codification Of Hypothecation

The Rajamannar Committee on Personal Property Security Law also has recommended that there is an imminent need for codifying the law relating to hypothecation.

Relevant extracts are in Annexure 4. As the confusion still persists, rather aggravated, as discussed above, on account of conflicting views of High Courts, codification has become inevitable. The rights and liabilities flowing from the contract of hypothecation vary depending upon the kind of movable property involved. In respect of stock in trade, the debtor will have the right to sell the properties; in respect of raw-materials, the borrower will have the right to complete them into finished products and sell also; but in the case of plant and machinery, the borrower will not have the right to dispose of the property, except with the prior permission of the creditor. An amount of flexibility is necessary to cover the different requirements of trade or business. As such, the expression hypothecation should be defined so as to cover hypothecation of all kinds of properties, now in use. In simple terms, hypothecation may be defined as, creation of a security on movable properties without transfering possession of the same to the creditor. The definition should provide for the rights and liabilities to be stipulated between the parties under the contract. In respect of hypothecation by way of floating charge on raw materials, stock in trade stores, actionable claims etc, the circumstances in which it crystalises as fixed charge may be laid down. Further, the creditor should have the right to seize, and or sell the same without the intervention of Court.

3.2.2. Notice

One problem that could arise in seizure is the need for giving prior notice. While it might be considered harsh to dispense with the giving of notice, the right of seizure could be rendered nugatory if the creditor is required to give a notice of his intention to seize the property of the borrower enabling him to dispose of or transfer or remove the same. Once the creditor has called upon the borrower in default, to repay the dues, it should not be necessary for the creditor to give a notice again of his intention to seize the hypothecated security.

3.2.3. Sale

The right of sale can be conferred on the creditor irrespective of whether he has secured possession of the movable property or not, if he is able to sell the same without even taking possession. Right of sale even without possession with the creditor may not be of much practical importance as the creditor may not get any buyers. Even so, when institutions such as debt collecting agencies or factors are perfected, right to sell goods which are not in possession of creditors may not pose a formidable problem. In cases where the creditor is able to secure the possession of the hypothecated property, the hypothecation should be treated as pledge and the creditor should be entitled to sell the properties in the same way as he would sell pledged properties by following the procedure prescribed under the Indian Contract Act. Similarly in case of hypothecation of actionable claims, on the crystallisation of the floating charge, the creditor should have the right to call for from the debtor the necessary details of actionable claims and to recover the same directly.

3.2.4. Priorities

Specific provisions about priorities with reference to the time of creation of security should be made. Hypothecation which is first in point of time should have priority over subsequent hypothecation, pledge, sale, attachment, etc,. Banks and financial institutions should be given priority against subsequent transactions even if the parties do not have notice of prior hypothecation.

3.3 IMMOVABLE PROPERTY - A VERY IMPORTANT SECURITY

Immovable property is no doubt, a very dependable security. The excerpts from the report of Rajamannar Committee on Real property Security Law, Annexure 5, throws light on the significance of immovable property as security and the need for rationalising the law relating to the same.

3.3.1. Need For Change

The Rajamannar Committee has reviewed the existing state of law in respect of mortgages. The relevant observations made by the Rajamannar Committee in this regard are excerpted in Annexure 6. With the change of the credit scene as prevalent in 1882 when the Transfer of property Act was enacted, there is a clear need for reviewing that Act in the present day context. The mortgage law contained in the Transfer of Property Act which views the mortgagee as a private moneylender and as such, is reluctant to confer wide powers to realise the security particularly, to sell the mortgage property, requires to be rationalised as the modern purveyors of credit are not mainly the unscrupulous moneylenders, but banks and financial institutions.

3.3.2. Special Provisions For Banks And Financial Institutions

The Rajamannar Committee advocated that the right of sale without the intervention of the Court should be allowed to all banks and certain notified financial institutions with reference to all types of advances other than those made against the security of agricultural land. For justifying special provisions in favour of banks and other public financial institutions, it refers to the scheme of Transfer of Property Act, which "makes distinctions as regards the exercise of the power of sale without the intervention of the Court between mortgages in favour of Europeans (including Christians, etc), on the one hand, and on the other mortgages in favour of natives (other than Christians, etc.), and mortgages with reference to property situate in specified places and property situate outside such places."

3.3.3. Private Sale

The right of private sale is conferred on the mortgagee under certain circumstances mentioned in Section 69 of the Transfer of Property Act. Such a right is available only to a very limited extent. As already discussed above, the reasons for the limitations prescribed

in Section 69 of the Transfer of property Act, no longer exist now. The exclusion of English mortgages where the mortgagor or the mortgagee is a Hindu, Mohammedan or Buddhist, from the mortgages where right of private sale is permissible, should be done away with. In other words, irrespective of the race, sects, tribe or class of the mortgagor or the mortgagee, the right of private sale should be permissible.

3.3.4. Further, in cases where the mortgage deed confers upon the mortgagee a right of private sale, the restriction that the mortgagee should be Government or that the mortgage property should be situate within the towns of Calcutta, Madras and Bombay should also be removed. In order to protect the borrowers from the possible exploitation by moneylenders or other private creditors, Section 69 may provide that in cases where the mortgage deed confers upon the mortgagee, expressly the right of private sale, if the mortgagee is a bank or a financial institution, the mortgagee should have a right of private sale of mortgage properties including agricultural lands.

3.3.5. Receivers

Presently, Section 69A of the Transfer of Property Act provides for appointment of a receiver of the mortgage property in the mortgage deed in which the right of private sale is conferred. The rights of the receiver stipulated in Section 69A should also include the right to dispose of the property to recover dues of the banks and financial institutions. This would be in harmony with the proposed amendment to Section 69 so as to make it possible for all English mortgagees and banks and financial institutions in whom the right of private sale would be vested in mortgagee deed, to sell the property without the intervention of the Court.

3.3.6. It is possible that inspite of the right of private sale being conferred on banks and financial institutions, they may not be in a position to dispose of the properties themselves on account of certain practical constraints. In such a situation, it should be open to the banks and financial institutions to approach the Banking Tribunals or the Recovery Officers as the case may be, for getting the mortgage properties sold. The idea is that, the conferment of right of private sale on banks and financial institutions should not come in the way of those institutions approaching the Banking Tribunals for recovery.

3.3.7. Stamp Duty

There is an incidental but a very important aspect connected with the subject of mortgages. That is about heavy stamp duty payable on mortgages. One of the reasons for which mortgage by deposit of title deeds has come to stay is the absence of stamp duty on that mortgage. Some State Governments have amended the stamp law even to bring the mortgage by deposit of title deeds within duty net. The creditors and debtors are anxious to go in for creation of security under documentation which either does not attract stamp duty at all or attract least stamp duty. State Governments are not lagging behind in bringing all conceivable methods of creating security within the folds of stamp

laws. This is an unhappy situation. It can also in some way, complicate the simplification of documentation, dilute the process of expeditious recovery and impede the development of economic activity in general. This Committee therefore recommends that stamp duty on mortgages should be reduced considerably and made uniform so that banks and financial institutions who act as catalysts in acceleration of economic activity should be able to take simple mortgage deed with right of private sale.

3.4. OTHER MEASURES

The long term normal measures suggested above, are for making hypothecation or mortgage more effective from the point of view of the lending institutions and to impart greater measure of flexibility in the realisation of securities. That apart, banks and financial institutions, encounter other difficulties in the creation of the mortgage also. The following are a few of the difficulties or impediments which may be removed for making collateralisation, disposal and realisation of securities more simple and effective.

3.4.1. Urban Land Ceiling :

Under the Urban Land (Ceiling & Regulation) Act, 1976 the banks and financial institutions have been given certain protection regarding holding of urban land and creation of mortgage on urban land in their favour. In addition to such protection, the need for obtaining no objection/permission from the authorities concerned, before creation of mortgage in favour of banks and financial institutions should be dispensed with. This has been pointed out by the Tiwari committee also (P.78) Once the mortgage is created in favour of banks and financial institutions, there should not be any further hurdle in the disposal of the mortgaged urban land in the event of default. It should not be necessary for banks and financial institutions to look out for a party who under the existing Act is entitled to acquire urban land. Such restrictions would reduce the number of possible purchasers thereby affecting recovery. If the surplus land available with sick industrial units could be sold for realising the dues of banks and financial institutions, it would also help in improving recovery. Suitable amendments to the Urban Land (Ceiling & Regulation) Act, 1976 to take care of the above impediments coming in the way of banks and financial institutions, need to be carried out.

3.4.2. Land Tenures :

Agricultural lands pose greater difficulties. Different types of land tenures, such as, tenancies, occupancies etc. are prevalent in different States. Not only the nomenclature of the landlords and tenants is different, but also the rights which they have, in respect of their holding. Though under most of the State legislations, it is permissible to create a mortgage in favour of the banks, there is no sufficient freedom for the banks and financial institutions to enforce the security by selling it to anybody, as there are restrictions regarding the persons to whom agricultural lands can be transferred. There is need to remove the difficulties faced by banks and financial institutions in this regard.

3.4.3. These different land tenures not only cause the difficulty in enforcing the security but also pose problems in investigation of title. The need for rationalising the land records to make investigation of title easy, is overdue.

3.4.4. Revitalisation Of BIFR

The Sick Industrial Companies (Special Provisions) Act, 1986 (SICA) was enacted with the objectives mentioned in its preamble which reads as under.

> "An Act to make in the public interest, special provisions with a view to securing the timely detecting of sick and potentially sick companies owning industrial undertakings, the speedy determination by board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect of such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto."

3.4.5. Though the Board for Industrial and Financial Reconstruction (BIFR) set up under SICA is reported to have converted some sick units into profit making ones, there is scope for unscrupulous units to abuse its process and delay recovery. The institution of BIFR is being used by delinquent promoters of sick units as an additional escape route for prolonging the sickness of the unit beyond reasonable limit so that repayment of the borrowed amounts could be delayed and at the same time its liquidation is delayed. The statistical information made available to the Committee by the Industrial and Export Credit Department, Reserve Bank of India (Annexure 7), shows that the recovery of dues of banks and financial institutions through BIFR by taking companies beyond revival into liquidation or selling the assets of such sick industrial companies has not been very encouraging. It is necessary to have a fresh look at the role and functioning of BIFR in the reconstruction of sick industrial companies, with a view to improving the recovery of overdues.

3.4.6. No doubt, it will not be in the interest of the economy to wind up industrial undertakings if it is possible to revive them within a reasonable time frame and normal financial assistance. But at the same time, if the company is sick beyond revival, the approach should be, instead of injecting further public money into the sick unit, the unit should, without loss of any further time, be wound up, the assets, realised and the banks and financial institutions, repaid. There should be reorientation in the perception and with this objective, the institution of BIFR should be revitalised and should be made a kind of voluntary organisation in which the sick industrial company, labour, the banks and financial institutions, and the State Governments concerned come together and consider the possibilities of reconstruction without further major investment of public funds or wind it up for common good.In this context, the Committee has serious reservation about the need for an appellate authority under SICA. In tune with the reasons given by this Comittee for not recommending an appellate authority under the proposed legislation, the Committee would recommend the abolition of the appellate authority under SICA.

3.4.7. Labour Laws

The Narasimham Committee has noticed in its Report that "... while bank trade unions have performed their legitimate functicn of protecting service conditions of the employees, they also appear to have contributed to the growth of restrictive practices in areas such as work norms...." It has recorded that there is some evidence of weakening of discipline which has affected managerial functioning. In the modern days of fast developing technology, the work techniques also have to change so as to optimise the use of the developing technology for the growth and profitability ofthese institutions. It is necessary that the banks and financial institutions have therefore greater latitude in using modern technology without affecting the interests of working class in general. The extant labour laws, as experience of several years shows,are not very conducive for the promotion of industrial harmony and for enhancement of productivity of labour. This Committee feels that it is time to look into the existing labour laws afresh, particularly in relation to their operation vis-a-vis the banks and financial institutions. It is not easy to strike a balance between the interest of labour and that of the management which would make for the production and productivity to be maximised while ensuring and improving the welfare of the working class. Perhaps, service conditions of various categories of staff in banks and financial institutions may have bearing while studying this problem. This committee hopes that the Government will have this subject and the possibility of laying down uniform service code, examined thoroughly by a suitable expert committee representing various interests.

3.4.8. Debt Collecting Agencies

The Kalyanasundaram Committee on introduction of factoring services in India, has recommended promotion of a legislation to support the establishment of efficient and viable factoring organisations. That Committee had examined the implications of factoring for collecting the dues of banks' customers from their clients. The possibilities of setting up similar institutions for recovering the dues of the banks and financial institutions also may be examined, particularly in the context of the suggestions made by this Committee, to confer powers on the banks and financial institutions, to sell the non-possessary securities, both movable and immovable. If the banks and financial institutions are not in a position to effectively exercise such powers of seizure and sale, it should be possible for them to take recourse to certain professional debt collecting agencies, who may specialise in that field. To prevent misuse of such powers by unscrupulous agencies, causing harassment to the members of the public, it could be worthwhile to provide a statutory basis for licensing of such debt collecting agencies and regulating their functions. The feasibility of setting up such an institution namely, debt collecting agencies, the implications of the same etc, in the light of the experience of such agencies abroad, will have to be examined separately.

3.4.9 Micro Filmed Documents And Computerised Accounts

Under the Bankers' Books Evidence Act, banks have certain protection from the production of the original record, if a certified copy of the account is produced in the

Court. Banks and financial Institutions, as a step towards modernisation and convenience, micro film the documents. Some banks and financial institutions, to a limited extent, are reported to be maintaining the accounts of the customers in the electronic medium or computer. In respect of such accounts, it is necessary, that print outs taken should be admissible in evidence. In order to cover such computer print outs and copies taken from micro filmed documents, within the purview of the Bankers' Books Evidence Act, Indian Banks' Association has requested Government of India to carry out suitable amendments. Extracts from the letter written to the Government of India by Indian Banks' Association is annexed as Annexure 8. This Committee is satisfied that such amendments as sought for by Indian Banks' Association are necessary in the Indian Evidence Act and the Bankers' Books Evidence Act.

CHAPTER IV

NON-STATUTORY AND VOLUNTARY MEASURES

4.1 The reforms necessary in the statutory framework, particularly for giving the banks and financial institutions the right of private sale of the securities as also the setting up of Banking Tribunals etc. have been discussed above. In order to improve recovery, banks and financial institutions can, in the meanwhile take certain voluntary steps for improving recovery. Such steps would be useful to the banks and financial institutions even after statutory reforms are carried out and the exercise should be continued on an ongoing basis.

4.2 Spolight On Top 200 Defaulters

One has to bear in mind that any legal remedy suggested cannot be a substitute for the initiative and voluntary efforts of individuals, banks and financial institutions. Legal remedies and voluntary efforts should go hand in hand. Special efforts in recovery have to be focussed on cases where the amounts outstanding are huge and the parties have the means to pay, but are committing the default willfully. In such cases, the banks and financial institutions should appraise the financial position of the borrowers and prepare a list of the top, say, 200 defaulters owing huge sums of money having sufficient assets. The strategies which are expected to yield results have to be employed and the progress reviewed from time to time at a fairly high level within the banks and financial institutions. In the context of the available securities or the other properties of the borrowers, one may have to consider adopting the carrot and stick strategies for speeding up recovery. Speaking generally, in deserving cases, they may consider granting instalments or taking additional security or requiring the dues to be guaranteed by third parties, or even waiving of penal interest, etc. As it would not be possible to give an exhaustive list of strategies to be adopted by the banks and financial institutions in this regard, as the same would vary from case to case depending upon the facts and circumstances, the banks and financial institutions should themselves evolve their own methods for tackling the top willful defaulters. For this purpose, they should enlist the support and co-operation of all the others in the field. If necessary, the possibilities of using the good offices of Reserve Bank of India for bringing about coordination amongst banks and financial institutions should be explored. Further, the deterrent of black listing of errant entrepreneurs suggested by the Tiwari Committee in para. 3.21 of its report could also be considered in appropriate cases.

4.3 Drafting Personnel And Training

In the ultimate analysis, any apparatus would, for its smooth and efficient functioning, need a band of dedicated and competent workforce to operate it. The personnel dealing with suits and executions for recovering the dues should be those who know how to handle commercial litigation. Deployment of the personnel having the necessary tact to deal with the borrowers have to be identified and deployed for this purpose. Further, following up of execution petition and ensuring that the orders of

attachment passed by the Courts are given effect to , also go a long way in improving the recovery. Taking into consideration the amounts locked up in litigation at different centres, banks and financial institutions should identify from among their own staff, the officials who can be entrusted with such duties and deploy them for such purposes. Such personnel could also be useful in the long run for functioning as Recovery Officers when the proposed legislation is enacted. Banks and financial institutions should impart the necessary training to such staff.

4.4 Review Of Documentation

The documents obtained by banks and financial institutions are by and large standardised by now. Banks and financial institutions have not expressed any serious difficulties in this regard. The documentation is no doubt voluminous. In view of the simple loan transactions, the possibilities of simplifying the documents could be explored so as to improve the efficacy of the system. The clauses in the documents which have no relevance to the transactions could be conveniently avoided. This could help in concentrating on the rights available to banks and financial institutions under the documents, thereby protecting their own interests and safeguarding the securities. Banks and financial institutions may independently review their own documentation for this purpose. They may impress upon their officers, the need to pay special attention to the proper execution of the documents. The Committee has been told that in some cases of banks,the documents tendered in the Courts lack completeness, proper execution and display other deficiencies. The borrowers who are interested in protracting the proceedings take full advantage of such situations. There is thus an immediate need to take effective remedial measures in this regard, may be, by evolving a system of checks and balances.

4.5 Appointment Of Receivers

One factor which can be taken care of, while reviewing the documentation is reserving to the banks and financial institutions the right to appoint receivers who may among other things, be empowered to dispose of the securities for realising the dues. The clause used in debenture trust deeds in England, which is extracted in Palmer's Company Law, authorises the mortgagee banks to appoint a receiver who will be competent to sell the properties also. The question whether in the light of Section 69A of Transfer of property Act, the receiver can be authorised to sell the mortgage properties, deserves to be examined in greater detail. Though a Division Bench of Madras High Court, in Krishnammal v. N. Krishan and others AIR 1956 Mad 424, has held that the receiver appointed under Section 69A cannot sell the mortgage property, the question whether the mortgage deed can confer such an authority was not before the Court. Sub-Section (1) of Section 69A deals with appointment of receiver of the income of mortgage property by a mortgagee having the right to exercise the power of sale under Section 69. This provision, as can be seen from sub-section (9) of Section 69A, is subject to the contrary intention not having been expressed in the mortgage deed. Further, by reason of sub-section (9), the provisions of sub-sections (3) to (8) of Section 69A dealing with the powers and functions of the receiver can be varied or extended, and such

variations and extensions shall operate as if they were contained in these sub-sections. In view of this language of sub-section (9) of Section 69A, if the mortgage deed authorises the banks and financial institutions to appoint a receiver and authorises such a receiver to sell the properties and adjust the proceeds against the outstanding dues, the same should be enforceable. The Committee recommends that banks and financial institutions may, in the light of the provisions of sub-section (9) of Section 69A and in view of the general provisions of law,incorporate suitable clauses in the mortgage deed or the debenture trust deed. The Committee also recommends that Section 69A may be amended to clarify the position.

4.6 Computerisation

The Rangarajan Committee on computerisation has pointed out that the programme of computerisation as envisaged does not result in any reduction of labour but some re-allocation of work and the objective of mechanisation is not to replace men with machines but to make work life more meaningful and to reduce the drudgery involved in routine work. The Narasimham Committee has also observed that if customer service is to be improved, a measure of mechanisation and computerisation may be necessary. This Committee cannot agree more with the views of these Committees and is of the view that the routine work connected with the lending operations like documentation should be mechanised, so that the man-power can be better utilised for improving the quality of appraisal of loan proposals, lending, follow-up and recovery of overdues. This Committee accordingly recommends the mechanisation of the above area in particular.

CHAPTER V
SUMMARY

5.1 The observations and recommendations of this committee on the terms of reference are summarised below.

5.2 EXISTING LEGAL FRAMEWORK

The Committee has examined the existing legal framework in relation to hypothecation, mortgages, revival of sick industries, urban land ceiling, remedies available for recovering the dues of banks and financial institutions etc,.The following are the main observations of the Committee in respect of the existing legal framework.

i] The remedy of approaching civil Courts for recovering the dues of banks and financial institutions is not adequate, as it is time consuming. (para 2.2)

ii] There is a long felt need for the establishment of Tribunals to deal with the recovery of the dues of banks and financial institutions (para 2.7).

iii] Case law is not uniform regarding the right of the creditor to seize and sell the hypothecated property on borrower's default even if such a right is reserved to the creditor under the hypothecation deed (para 3.1.2)

iv] Banks and financial institutions have a limited scope for selling the mortgaged properties without the intervention of Court. (para 3.3.3)

v] Even for creating mortgage in favour of banks and financial institutions, permissions are to be obtained from Competent Authority under Urban Land (Ceiling & Regulation) Act 1976. There are many restrictions under the urban land ceiling laws and the local land tenures for disposal of the properties mortgaged to banks and financial institutions. (para 3.4.1)

vi] Though in some cases, BIFR has been successful in reviving sick units, there is scope to improve it so as to be more helpful in recovering the dues of banks and financial institutions. (para 3.4.4)

5.3 PROPOSED AMENDMENTS

Collateralisation, realisation and recovery by banks and financial institutions are seriously affected by the above short-comings in the existing legal framework. To remedy the same, certain short term and long term measures are recommended

A Short Term Measures

To clear up the existing huge outstanding dues of banks and financial institutions, which have a historic origin,a legislation is recommended for setting up Banking Tribunals and Recovery officers, as a short term measure. The main characteristics of the Tribunals and the Recovery officers under the proposed legislation are as under.

i] These Tribunals will be self-financing , in the sense, the operational expenses including the salaries of presiding officers and other staff , will be met fully by the amounts to be paid by the banks and financial institutions for availing of the services of the Tribunal for disposal of their claims (para 2.11.1)

ii] These Tribunals will have a lean outfit with minimum number of supporting staff. The routine work of the Tribunals should be mechanised. (para 2.11.2)

iii] The presiding officers should have the background of commercial litigation. The civil procedure code will not be applicable to the proceedings before the Banking Tribunals. (para 2.11.3)

iv] Private sector banks also will be covered. (para 2.11.4)

v] These Tribunals will have jurisdiction only in respect of claims above Rs.5 lakhs. It will be open to them to give priority to high value claims regardless of their date of filing. (para 2.11.5)

vi] Claims below Rs. 5 Lakhs will be dealt with by Recovery officers of the banks and financial institutions themselves. Such officials are to be notified by the Central Government on the same lines as the Estate officers under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. (para 2.11.7)

vii] The Tribunals will follow summary procedure and act on certain presumptions regarding the existence of debt. There will be no discretion to reduce the contracted rate of interest

(para 2.11.8 and 2.11.10)

viii] The Recovery officers will follow even simpler procedure and determine the amount due, after giving notice. (para 2.11.8).

ix] The Tribunals will have power to issue suitable interlocutory orders. Recovery officers will also be able to take certain interim steps. (para 2.11.9)

x] The Recovery officers of banks and financial institutions will deal only with the claims of their own institutions and if there are multiple claims of other banks and financial institutions, the same will be referred to the Banking Tribunals. (para 2.11.11)

xi] Revision will lie to the High Court against the orders of the Tribunals and Recovery officers. (para 2.11.12)

xii] Certain acts of the borrowers, such as, transferring of securities, setting up of vexatious defences before Banking Tribunals etc. should be made punishable offences. (para 2.11.13)

xiii] Depending upon the workload, officials will be attached to these Tribunals who will have the responsibilities of executing the orders passed by these Tribunals or the Recovery officers, in case of need, by attachment and sale of the properties of the borrowers. The Recovery officers of banks and financial institutions and the officials attached to these Tribunals for the purpose of recovering the dues, will be vested with the powers of attachment and sale conferred on Tax Recovery officers under Parts II and III of Schedule II of the Income Tax Act, 1961 (para 2.11.14)

xiv] Jurisdiction of Civil Courts will be barred . (para 2.11.15)

B Long Term Measures

i] Codification of hypothecation and conferring the right of seizure and of private sale of the hypothecated property on the creditor in the event of borrower's default. (para 3.2.1)

ii] Rationalising Sections 69 and 69A of the Transfer of property Act, to confer on banks and financial institutions, the right of private sale of mortgage properties and to empower the receivers appointed by banks and financial institutions to sell the property without the

intervention of courts (paras 3.3.3 to 3.3.6)

iii] Streamlining of Laws relating to urban land ceiling and land tenures (para 3.4.1 & 3.4.2)

iv] To revitalise BIFR so as to make it a voluntary kind of an institution to examine the possibilities of revival of sick industrial units or to sell the assets and realise the dues of banks and financial institutions. (para 3.4.4)

v] Review of labour laws vis-a-vis banks and financial institutions. (para 3.4.7)

vi] Examining the possibilities of creating a new institution called 'Debt Collecting Agency' for recovering the dues of banks and financial institutions by providing suitable safeguards such as licensing and supervision of such agencies. (para 3.4.8)

vii] Amendments to Indian Evidence Act and Bankers' Books Evidence Act to make copies produced by modern methods, of accounts and books maintained by banks and financial institutions, acceptable in evidence. (para 3.4.9)

5.4 NON-STATUTORY AND VOLUNTARY MEASURES

In addition to the above short term and long term measures, the Committee has identified the following voluntary measures to be taken up by banks and financial institutions pending the above reforms, for improving the efficacy of the financial system.

i] Spotlight on top 200 defaulters for putting in, result oriented efforts in achieving recovery. (para 4.2)

ii] Drafting suitable personnel and training them for taking steps to attach and dispose of securities. (para 4.3)

iii] Review of documentation so as to concentrate on the rights available to banks and financial institutions and taking care to get properly executed complete documents. (para 4.4)

iv] Conferring by suitable documentation, the power of sale on the receivers appointed in the debenture trust deeds and mortgage deeds, for realising the dues of the banks and financial institutions. (para 4.5)

v] Mechanisation of routine work for better utilisation of the available manpower for improving the quality of appraisal of loan proposals, lending, follow-up and recovery of overdues. (para 4.6)

Shri V. G. Hegde
(Chairman)

Shri M.L.Bhakta
(Member)

Shri J Radhakrishnan
(Member)

Shri G.Sreerama Murthy
(Member)

Shri P.Sri Sai Ram
(Member)

Shri V.K.Shah
(Member)

ANNEXURES

Annexure 1

RESERVE BANK OF INDIA
MEMORANDUM

Bombay

Dated 6th January 1992

Committee on legal aspects relating to operations of banking and financial system

Consequent on the liberalisation in trade and industrial policy, the banking and financial system would henceforth be called upon to function in a more deregulated environment. It is, therefore, necessary that banks and financial institutions evolve appropriate and efficacious legal mechanism for protecting their interests as also those of investing public. Against the above background and in the light of the recommendations of the Narasimham Committee on the financial system, the Reserve Bank has decided to set up a Committee to examine the existing legal framework concerning banking and financial institutions with particular reference to their lending operations, collateralisation, realisation and recovery. The committee will consist of the following :

1. **Shri V.G. Hegde** - **Chairman**
   Pr. Legal Adviser, RBI
2. **Shri M.L. Bhakta** - **Member**
   Senior partner,
   Kanga and Co.,
   Solicitors
3. **Shri J. Radhakrishnan** - **Member**
   General Manager (Law)
   State Bank of India
4. **Shri G.Sreerama Murthy** - **Member**
   Legal Adviser
   I.D.B.I.
5. **Shri V.K.Shah** - **Member**
   Law Officer,
   I.B.A.

Committee may co-opt any other legal practioner

2. Shri G.S. Hegde, Asstt. Legal Adviser, RBI will act as Secretary to the Committee.
3. Terms of reference will be as follows:
   i) To examine the existing legal framework relating to banking and financial system with particular reference to their lending operations, collateralisation,

realisation and recovery;

ii) To suggest necessary amendments to the existing legal framework with a view to improving the efficacy of the legal machinery in that regard;

iii) To examine legal provisions relating to the functioning and operations of banking and financial system in the light of the relevant recommendations of various Committees as also those of the Narasimham Committee and to suggest improvements in the existing provisions with a view to bringing about the required efficiency.

4. Committee will submit the report in two months.

Sd/-
Governor

Annexure 2

Extracts from the Report of the Tiwari Committee.

Large Amounts Recovery Due

Large amounts advanced by the banks and financial institutions to defaulting industrial units and other defaulting borrowers are locked up due to the delays under the existing legal procedure and process for recovery.

Civil Courts' delays

8.2 The Civil Courts are burdened with diverse types of cases. Recovery of dues by the banks and financial institutions is not given any priority by the Civil Courts. the Banks and financial institutions like any other litigants have to go through a process of pursuing the cases for recovery through Civil Courts for unduly long periods.First the case has to be instituted in the Lower Court which, after issue of summons, receipt of pleadings framing of issues, taking evidence Oral and documentary and giving hearings,pronounces its judgement. Against such judgment, provision is made for an appeal to Sub/District Court or to High Court if the appeal is from Sub/District Court. There can also be a second appeal or revision petition to High court. On the decision of High Court the litigation can be taken to the Supreme Court under certain circumstances and thus have it prolonged. the progress more often gets bogged down through interlocutory petitions and stay orders from higher Courts. due to the delays involved in such elaborate process the interests of the banks and financial institutions are very often adversely affected. Attempts will, therefore, have to be made to reduce the impact of the arduous procedures presently obtaining for the recovery of dues insofar as the banks and financial institutions are concerned.

Reference to Sub-committee

8.3 The committee endorsed the views of the sub-committee referred to in Chapter I to examine and recommend the need for a special legislation for recovery of dues of the banks and financial institutions and recommends inter alia the enactment of a special legislation for such recoveries. the Sub-Committee drew upon the data and the views furnished by 18 nationalised banks, the SBI and its 7 subsidiaries regarding the number of suits instituted, amounts sought to be recovered and received and expenditure on the litigation available with the Ministry of Finance, Government of India as also the information regarding the above received from the IFCI, IRCI and ICICI. It was also noted that the IDBI has so far filed only one suit for such recovery. Data so collected are furnished in Annexure X. the views of the Sub-Committee are as follows :

i) After examining the provisions contained in the Revenue Recovery Act, Public Demands Recovery Acts, Income-tax Act insofar as it relates to recovery of dues , co-operative societies Act, the summary procedure provided for under Order 37 of the Civil Procedure Code and the judicial pronouncements in relation thereto, it felt that

since the resources of the banks and financial institutions are backed by public deposits, public borrowings and budgetary allocations being public funds, the principle that the state should have a special procedure to enforce its own demands should equally be extended to the recovery of dues of the banks and financial institutions as well.

ii) Since the emphasis is on the recovery of dues, such a special machinery should apply to recovery of dues of the banks and financial institutions, from all industries (including small scale industries), whether normal or sick, and all other borrowers excluding the agriculturists.

iii) There could be three modes to recover such dues through special process, viz.

Three Alternatives

(a) To treat the dues of the banks and financial institutions as arrears of land revenue and to entrust the recovery to the State recovery machinery;

(b) To vest special powers in favour of the banks and financial institutions similar to those conferred on the IFCI and the SFCs under their respective statutes and

(c) To set up in terms of the special legislation, quasi-judicial authorities, functioning like administrative tribunals, exclusively devoted to adjudicate on issues relating to such recoveries. The relative merits of the said three modes are discussed in the following paragraphs.

To recover as arrears of land revenue

iv) The first mode is to treat the dues of the banks and financial institutions as arrears of land revenue and to entrust the recovery to the state Revenue Authorities. It may, however, be noted that the state Recovery machinery for recovering land revenue is already burdened with the recovery of a number of public dues. The said machinery has also to perform a number of other duties of the state. According to the Madras High Court,(In the case of Venkataswamy versus Tamil Nadu SID Corporation - AIR 1981 Madras 318) the expression 'Land revenue' has acquired a definite and well understood meaning and it is not open to legislature, by fiction, to treat something which is not 'land revenue' as 'land revenue' and to make law with respect to the same. In the light of the said observation, it would not be advisable to treat the dues of the banks and financial institutions as arrears of land revenue. Further, in view of the magnitude of the task involved, and the mounting arrears, it would not be advisable to entrust the task of recovery to the state revenue machinery.

To confer powers on banks and financial institutions similar to those of IFCI/SFCs

v) The second mode is to vest special powers in favour of the banks and financial institutions similar to the powers conferred on IFCI and SFCs under their respective statutes for recovering their dues. while it is noted that certain SFCs have met with a good deal of success in making recoveries by invoking special provisions of the SFCs

Act, the efforts of the IFCI in this regard to recover their dues from large scale units have not met with the same degree of success.

Special Tribunals

vi) The third mode is to set up quasi-judicial bodies like administrative tribunals to deal exclusively with the recovery of dues of the banks and the financial institutions by following summary procedures. With the growth of modern administration, setting up of tribunals is being accepted as being inevitable. The number of cases being disposed of by tribunals in England is, perhaps, more than those by the civil courts. In France, there is a whole set of administrative tribunals under the system *Droit Administratif.* In India also there are tribunals for setling industrial, labour, income-tax, irrigation, revenue and service matters and co-operative tribunals for recovery of dues of the co-operative banks. Recognising the need for speedy settlement of issues by specialised bodies, the Constitution of India has made special provisions (Articles 323 A and 323 B) for settlement of certain disputes. In the light of what is stated above, it is recommended that the Central Government may set up a class of tribunals which would in a summary way but following the principles of natural justice, adjudi cate finally, within a time-bound schedule, all matters in relation to recovery of dues of the banks and financialinstitutions. These tribunals should be manned by persons having specialised knowledge in the functioning of banks, financial institutions and industry. They should follow simple and summary procedures in accordance with the principles of natural justice without having to follow the ordinary procedures of Civil Courts.

Annexure 3

Extracts from the Opinion of a Constitutional Expert.

Qn.2): Whether the right to constitute such tribunals is limited to the various matters mentioned in Article 323-B(2) or whether it is open to the appropriate legislature to constitute tribunals in respect of other matters within its legislative competence though such tribunals would not be entitled to the protection given to tribunals constituted under Article 323-B.

Ans : The right of the appropriate Legislature to constitute Tribunals to deal with matters other than those specified in the exercise of their legislative power is not taken away.but a law setting up such a tribunal will not have the protection given by Article 323-A and 323-B by excluding the jurisdiction of Courts as there provided, and an aggrieved party can invoke Article 226 and/or Article 227 for appropriate relief.

Qn.3) : Whether Parliament could, by a law passed by it, set up a tribunal/tribunals having exclusive jurisdiction and for this purpose ousting the ordinary civil jurisdiction of the Civil Courts for hearing and deciding cases filed by banks for recovery of their dues from the customers.

Ans : Parliament could set up a Tribunal having exclusive jurisdiction and excluding the ordinary civil jurisdiction of Civil courts for hearing cases filed by them for recovery of their dues. But such a law would not exclude the jurisdiction of the High Courts under Articles 226 and under Article 227 because such a law is not covered by Articles 323-A and 323-B.

Annexure 4

Extracts from the Report on Personal Property Security Law (The Rajamannar Committee).

Analogy Of Hire-Purchase Financier's Right of Seizure

1.2.51 While banks have problems in having recourse against the security without instituting judicial proceedings, we may mention in contrast the right given to the hire-purchase finaciers under the Hire-Purchase Act, 1972 (which is yet to come into force). Section 19(c) of the said Act enables a hire-purchase finacier "to enter the premises of the hirer and seize the goods". In the event of default there is no such statutory protection extended to banks and other financing institutions as regards the assets secured to them. With reference to the rights of enforcement of the charge, we may have to ensure that the rights and privileges available to banks and other financing institution are not in any event inferior to the rights and privileges given to other classes of finaciers. While extending credit for purchase money, the status of banks should not be inferior to that of hire-purchase financiers who also extend credit for purchase money.

Bankers' Apprehensions

1.2.52 Subsequent to the decision of the Madras High court in shentilanathan's case bankers and their solicitors are having justifiable apprehensions regarding the secured character of the banks' advances against hypothecation of goods. The State Bank of India has viewed the judgment as appearing "to cut at the root of the security afforded by the hypothecation of goods".

Move For Codification

1.2.53 Messrs. King & Partridge, Solicitors, Madras, have written to several banks that while they do not fully agree with the conclusions of the Madras High court, it would be better to codify the law relating to hypothecation of moveables. The Madras Centre of the Indian Banks' Association has also viewed that Government should be moved to codify the law relating to hypothecation.

1.2.54 The above analysis shows the urgent need for codifying the law relating to hypothecation. While codifying this branch of law we have to take care to see that we do not perpetuate the archaic and anachronistic concepts having no relevance to the current economic needs of our country.

Annexure 5

Extracts from the Report on Real Property Security Law

(The Rajamannar Committee)

Shri T.A. Pai,former Chairman of the Syndicate Bank Ltd. (Who was later the Minister for Industries in the Central Cabinet), in his speech at the bank's annual general meeting, in the context of the setting up of the Banking Commission by the Government of India, stressed the need of make a specific study of various legislations in the country, which come in the way of proper development of banking. Dealing with advances against real property, he observed:

"In a country where people, by convention are accustomed to investment on land and property, very often it is the only security that could be offered by the majority of the people, but the difficulty in accepting this security today is that it is not liquid, and could be subject to a lot of litigation in the matter of realisation. If the Transfer of Property Act is amended enabling the customer to borrow against the deposit of the title deeds, which could be auctioned off after a due notice just as shares or other securities, it may help the progress of banking considerably, Apart from this, a study is required in the documentation, standardisation, cost reduction and simplification of procedures which have been in vogue in this country for a long time without anybody looking into it to see whether they are necessary or whether they impede the smooth functioning of, banking services."

Annexure 6

Extracts from the Report on Real Property Security Law
(The Rajamannar Committee)

In the result, we may sum up, as under, the general position as regards the law relating to mortgages :

(1) Our general law relating to real property security was developed at a time when unscrupulous moneylenders were the main purveyors of credit. It is not surprising that this law has ceased to be appropriate when banks and other public financing institutions have taken up the responsibility of dispensing credit for productive and development purposes.

(2) The right of private sale without the intervention of the Court was rightly not allowed to be exercised by moneylenders who were by and large purveying credit when the Transfer of Property Act, 1882, was enacted; but the continu ance of this restriction with reference to banks and other public financing in stitutions affects adversely the flow of credit and encourages protracted and vexatious litigation which comes in the way of expeditious recovery of dues by such public financing institutions.

Annexure 7

Statistical Information furnished by Industrial & Export Credit Department Reserve Bank of India

As at the end of September 1990, there were 1468 sick industrial units and 817 weak industrial units in the non-SSI sector in the country, accounting for Rs.4734 crores and Rs. 2585 crores outstanding credit respectively. Of these 704 sick units and 245 weak units were found to be non-viable involving credit of Rs. 1670 crores and Rs.545 crores respectively. The action taken by banks for recovery of dues in respect of the non-viable units was reported by them as under :

(Amount in crores of Rs.)

	Sick units	Amt.	Weak units	Amt.
Suits filed	484	908.90	155	352.66
Liquidation Proceedings in process	28	60.76	4	14.51
Recovery by sale of stocks/sale proceeds	15	19.17	6	8.90
Accounts recalled/Notice served	36	76.37	21	38.50
Compromise Proposalsin progress	27	72.15	14	13.37
Cash losses met by Government	1	41.48	12	36.29
Action yet to be taken	80	417.51	22	65.98
Action not reported	33	115.05	11	14.39
	704	1670.35	245	544.63

Annexure 8

Extracts from the letter of Indian Banks' Association adressed to Government of India

In this connection we would like to submit that microfilm record has several advantages, If the banks adopt the microfilming system of of record retention or large amount of paper could be stored in a limited space. It would result in saving storage cost. The microfilm record retention will be within easy access because it could be connected to retrieval system by computers. It would result in increasing operational efficiency. In India the use of computer in many fields is on the increase and it would be desirable that computer record maintenance is covered appropriately for the banks and other industries by suitable provisions in Indian law.

Hong Kong Government has amended their Evidence Act to the effect that a print whether enlarged or not, purporting to be made from a film of a public document and purporting to be certified to be a print made from a film of a public document by the public officer or person who has custody of the film shall be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof. Some further provisions have also been made under that Act. .....

Similar provisions have been made in Greece in respect of microfilming of records. .....

In 1979 Canada became the first country to deal with the question of microfilm in legal evidence. The Canadian standard was widely read and was followed by the French as well as the British Government . In British legal system the legal objection to the admissibility of the computer evidence appear to be threefold. It offends the best evidence rule in that computer printout, the legible means by which the statements can be read, is not the original, which exists in magnetic form in the computer. The statements will often be hearsay in that they were processed into the computer by humans. Finally, there is the danger of inaccuracy or unreliability of the statement, which may have been tampered with or damaged by a faulty computer system. Taking into consideration the use of computers in that country the statues have contained specific provisions providing for the admission of computer evidence (See: Sch. 6 of the Banking Act 1979; S.3 of the Stock Exchange (Completion of Bargains) Act 1976). In England the courts have shown a willingness to extend definitions in statutes to include modern means of storing docu-

ments. the modern statutory provision on the admissibility of computer evidence is contained in the Civil Evidence Act 1968. In fact these are suggestions to refine the said Act itself. .....

We, therefore, suggest that on the above lines the Government of India may amend the provisions of the Indian Evidence Act and the Bankers' Books Evidence Act and other relevant laws on the subject so that the use of computer can be made increasingly acceptable even in court proceedings.