

I.K.Gujral Punjab Technical University
Master of Commerce Batch 2018 Onwards
MCOPBI 421-18
Banking Laws

Course objective : The course aims at imparting knowledge and equip students with different laws which are related to Indian Banking Industry. This knowledge will help the students to understand the laws related to modern banking system as well as establish link between the legal provisions and the practical aspects of banking.

Unit I

Banking Regulation Act, 1949:- Concept of Bank and Banker, Functions of Banks, Classification of Banks, Relationship between Bank and Customer, Control by government and its agencies, Management of Banking companies, On account and audit, Reconstruction and reorganization of banking companies, Suspension and winding up of business of banking companies, Social control over banking, Banking.

Unit II

The Negotiable instrument Act, 1881:- Definition and characteristic of Negotiable Instruments, Types of Negotiable Instruments, Definition and Essentials of Promissory Note, Bill of Exchange and Cheque, Liabilities and Capacity of Parties of Negotiable Instrument, Holder and Holder in due course, Transfer and Negotiation of Negotiable Instrument. Crossing of Cheques and payment, Dishonor of Cheques, Presentment and Payment, Dishonor, .Noting and Protest of Negotiable Instrument, Endorsement: Definition, Essential of a valid endorsement and its kinds, Rules of evidence and compensation.

Unit III

The Reserve Bank of India Act, 1934:- Incorporation, Capital, Management and Business of Banking Company, Central Banking function of Reserve Bank of India, Collection and furnishing of Credit Information, Control of Reserve Bank of India over Non-banking Institutions and Financial Institutions, Credit Control by Reserve Bank of India, Changing role of the RBI.

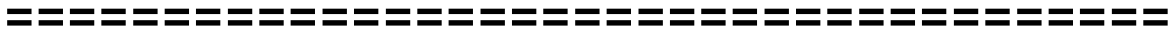
Unit IV

Law of Limitation - Provisions of Bankers Book Evidence Act -Special Features of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, TDS Banking Cash Transaction Tax Service Tax, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002: Asset Reconstruction Companies, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Banking Ombudsman Lok Adalats, Lender's Liability Act.

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UNIT-I

BANKING REGULATION ACT, 1949

❖ Meaning of Banking

Banking means transacting business with a bank; depositing or withdrawing funds or requesting a loan etc.

The development of banking is evolution in nature. The origin of the word bank can be traced back to the German word „Banck“ and Italian word „Banco“ which means heap of money. Banking is an old concept in India. It was present in ancient Vedic times. There were bankers known as „Sheth“, „Shah“, „Shroff“ or „Chettiar“ who were performing the function of bank.

Definition:- “Accepting for the purpose of lending & investment, of deposit of money from the public, repayable on demand order or otherwise and withdraw able by cheque, draft or otherwise.”

❖ **Functions of banks**

The main functions of banks are accepting deposit and lending loans:

A – accepting deposits

1. Fixed deposits:- These deposits mature after a considerable long period like 1 year or more than that the rate of interest is fixed the amount deposited cannot be withdrawn before maturity date.

2. Current A/C deposit:- These are mainly maintain by business community to facilitate frequent transaction with big amounts. Generally no rate of interest or very low rate of interest is paid on this account.

3. Savings bank A/C:- It is kind of demand deposits which is generally kept by the people for the sake of safety. These facility is given for small saver and normally a small rate of interest is paid.

4. Recurring deposit A/C:- In case of recurring deposit the fixed amount is deposited in a bank every month for a fixed period of time.

B-Lending loans

1. Call loans:- These loan are called back at any time. Normally, this loans are taken by bill brokers or stock brokers.

2. Short term loans:- These are sanctioned for a period up to 1 year.

3. Medium term loans:- These are sanctioned for the period varying between 1 and 5 years.

4. Long term loans:- These loan are sanctioned for a period of more than 5 years it includes:

1. Overdraft:- The bank grants overdraft facility to its reliable and respectable depositors. It enables companies, firms and businessmen to

withdraw amount over and above their actual balance in their current account.

2. Cash credit: Under this facility, the bank allows the borrower to withdraw cash against certain security.

3. Bills of Exchange:- The bank provide funds to their customers by purchasing or discounting bills of exchange. The bank charges commission up to the maturity period of bills.

➤ **The main functions, the banks also provide financial services to the corporate sector and business and society. They are as follows:**

1.Merchant Banking:- Merchant banking is an organization which underwrites securities for companies, advises in various activities. No person is allowed to carry out any activity as a Merchant Banker unless holds a certificate granted by SEBI. Thus, merchant banks are financial institutions which provide specialized services including acceptance of bills of exchange, corporate finance, portfolio management and other services.

2. Leasing:- Banks have started funding the fixed assets through leasing. It refers to the renting out of immovable property by the bank to the businessmen on a specified rent for a specific period on terms which may be mutually agreed upon. A written agreement is made in this respect.

3.Mutual funds:- The main function of mutual fund is to mobilize the savings of the general public and invest them in stock market and money market.

4. Venture Capital (VC):-Venture Capital is financial capital provided to early-stage, high-potential, high risk, growth startup companies. The venture capital fund makes money by owning equity in the companies it invests in, which usually have a novel technology or business model in high technology industries, such as biotechnology, IT, software, etc.

5. ATM:- An ATM is also known as cash point. The banks nowadays provide ATM facilities. The customers can withdraw money easily and quickly 24 hours a day.

6. Telebanking:- Telebanking is a throwback to the days when people would call into a central number at their bank/financial institution in order to get balance, check status and other account-related information. Most financial organizations offer telebanking services today; however, the public representation is known as telephone-based customer service or just customer service.

7. Credit cards:- Credit cards allow a person to buy goods and services up to a certain limit without immediate payment. The amount is paid to the shops, hotel, etc. by the commercial banks. **8. Locker Service:-** Under this service, lockers are provided to the public in various sizes on payment of fixed rent. Customers can deposit their valuables, documents, jewellery, securities, etc. in these lockers.

8. Underwriting:- This facility is provided to the joint stock companies and to the government. The banks guarantee the purchase of certain proportion of shares, if not sold in the market.

❖ **Types of Banks**

1. Commercial Banks:-These banks play the most important role in modern economic organisation. Their business mainly consists of receiving deposits, giving loans and financing the trade of a country. They provide short-term credit, i.e., lend money for short periods. This is their special feature.

2. Exchange Banks:-Exchange banks finance mostly the foreign trade of a country. Their main function is to discount, accept and collect foreign bills of exchange. They also buy and sell foreign currencies and help businessmen to convert their money into any foreign money they need. Their share in the internal trade of a country is usually small. In addition, they carry on ordinary banking business too.

3. Industrial Banks:-There are a few industrial banks in India. But in some other countries, notably Germany and Japan, these banks perform the function of advancing loans to industrial undertakings. Industries require capital for a long period for buying machinery and equipment. Industrial banks provide this type of Mock capital. Industrial banks have a large

capital of their own. They also receive deposits for longer periods. They are thus in a position to advance long-term loans.

In India, the Central Government set up an Industrial Finance Corporation of India (IFCI) in 1948. Its activities have since then been greatly enlarged. Further the States have also set up State Financial Corporations. The Central Government has also established the Industrial Credit and Investment Corporation of India (ICICI) and the National Industrial Development Corporation for the financing and promotion of industrial enterprises. In 1964 the Industrial Development Bank of India (IDBI) was established as the apex or top term-lending institution. These new institutions fill important gaps in our system of industrial finance.

4. Agricultural or Co-operative Banks:-The main business of agricultural banks is to provide funds to farmers. They are worked on the co-operative principle. Long-term capital is provided by land mortgage banks, nowadays called land-development banks, while short-term loans are given by co-operative societies and co-operative banks. Long-term loans are needed by the farmers for purchasing land or for permanent improvements on land, while short-period loans help them in purchasing implements, fertilizers and seeds. Such banks and societies are doing useful work in India.

5. Savings Banks:-These banks (perform the useful service of collecting small savings. Commercial banks too run “savings departments” to mobilise the savings of men of small means. The idea is to encourage thrift and discourage hoarding. Post Office Saving Banks in India are doing this useful work.

6. Central Banks:-Over and above the various types of banks mentioned above, there exists in almost all countries today a Central Bank. It is usually controlled and quite often owned by the government of the country.

7. Utility of Banks:-An efficient banking system is absolutely necessary for a country, if it is to progress economically. The services that an efficient banking system can render a country are indeed very valuable. Undeveloped banking system is not only an index of economic backwardness of a country; it is also an important cause of it. The banking

system can be useful in the following ways, in addition to what has been mentioned in the functions of banks.

❖ Role of Commercial banks in economic development of a country

1. Capital Formation:-Banks play an important role in capital formation, which is essential for the economic development of a country. They mobilize the small savings of the people scattered over a wide area through their network of branches all over the country and make it available for productive purposes.

Now-a-days, banks offer very attractive schemes to attract the people to save their money with them and bring the savings mobilized to the organized money market. If the banks do not perform this function, savings either remains idle or used in creating assets, which are low in scale of plan priorities.

2. Creation of Credit:-Banks create credit for the purpose of providing more funds for development projects. Credit creation leads to increased production, employment, sales and prices and thereby they cause faster economic development.

3. Channelizing the Funds to Productive Investment:-Banks invest the savings mobilized by them for productive purposes. Capital formation is not the only function of commercial banks. Pooled savings should be distributed to various sectors of the economy with a view to increase the productivity of the nation. Then only it can be said to have performed an important role in the economic development of the nation.

Commercial Banks aid the economic development of the nation through the capital formed by them. In India, loan lending operation of commercial banks subject to the control of the RBI. So our banks cannot lend loan, as they like.

4. Fuller Utilization of Resources:-Savings pooled by banks are utilized to a greater extent for development purposes of various regions in the country. It ensures fuller utilization of resources.

5. Encouraging Right Type of Industries:-The banks help in the development of the right type of industries by extending loan to right type of persons. In this way, they help not only for industrialization of the country but also for the economic development of the country. They grant loans and advances to manufacturers whose products are in great demand. The manufacturers in turn increase their products by introducing new methods of production and assist in raising the national income of the country.

6. Bank Rate Policy:-Economists are of the view that by changing the bank rates, changes can be made in the money supply of a country. In our country, the RBI regulates the rate of interest to be paid by banks for the deposits accepted by them and also the rate of interest to be charged by them on the loans granted by them.

7. Bank Monetize Debt:-Commercial banks transform the loan to be repaid after a certain period into cash, which can be immediately used for business activities. Manufacturers and wholesale traders cannot increase their sales without selling goods on credit basis. But credit sales may lead to locking up of capital. As a result, production may also be reduced. As banks are lending money by discounting bills of exchange, business concerns are able to carryout the economic activities without any interruption.

8. Finance to Government:-Government is acting as the promoter of industries in underdeveloped countries for which finance is needed for it. Banks provide long-term credit to Government by investing their funds in Government securities and short-term finance by purchasing Treasury Bills.

9. Bankers as Employers:-After the nationalization of big banks, banking industry has grown to a great extent. Bank's branches are opened in almost all the villages, which leads to the creation of new employment opportunities. Banks are also improving people for occupying various posts in their office.

10. Banks are Entrepreneurs:-In recent days, banks have assumed the role of developing entrepreneurship particularly in developing countries like India. Developing of entrepreneurship is a complex process. It includes the formation of project ideas, identification of specific projects suitable to

local conditions, inducing new entrepreneurs to take up these well-formulated projects and provision of counseling services like technical and managerial guidance.

❖ Advantages of Banking System

1. Economies of Large Scale Operations:-Under the branch banking system, the bank with a number of branches possesses huge financial resources and enjoys the benefits of large-scale operations,

(a) Highly trained and experienced staff is appointed which increases the efficiency of management,

(b) Division of labour is introduced in the banking operations which ensures greater economy in the working of the bank. Right persons are appointed at the right place and specialisation increases,

(c) Funds are made available liberally and at cheaper rates,

(d) Foreign exchange business is done economically,

(e) Large financial resources and wider geographical coverage increases public confidence in the banking system.

2. Spreading of Risk:-Another advantage of the branch banking system is the lesser risk and greater capacity to meet risks,

(a) Since there is geographical spreading and diversification of risks, the possibility of the failure of the of the bank is remote,

(b) The losses incurred by some branches may be offset by the profits earned by other branches,

(c) Large resources of branch banks increase their ability to face any crisis.

3. Economy in Cash Reserves:-Under the branch banking system, a particular branch can operate without keeping large amounts of idle reserves. In time of the need, resources can be transferred from one branch to another.

4. Diversification on Deposits and Assets:-There is greater diversification of both deposits and assets under branch banking system because of wider geographical coverage,

(a) Deposits are received from the areas where savings are in plenty,

(b) Loans are extended in those areas where funds are scarce and interest rates are high. The choice of securities and investments is larger in this system which increases the safety and liquidity of funds.

5. Cheap Remittance Facilities:-Since bank branches are spread over the whole country, it is easier and cheaper to transfer funds from one place to another. Inter-branch indebtedness is more easily adjusted than inter-bank indebtedness.

6. Uniform Interest Rates:-Under branch banking system, mobility of capital increases, which in turn, brings about equality in interest rates. Funds are transferred from areas with excessive demand for money to areas with deficit demand for money. As a result, the uniform rate of interest prevails in the whole area; it is prevented from rising in the excessive demand area and from falling in the deficit demand area.

7. Proper Use of Capital:-There is proper use of capital under the branch banking system. If a branch has excess reserves, but no opportunities for investment, it can transfer the resources to other branches which can make most profitable use of these resources.

8. Better Facilities to Customers:-The customers get better and greater facilities under the branch banking system. It is because of the small number of customers per branch and the increased efficiency achieved through large scale operations.

9. Banking Facilities in Backward Areas:-Under the branch banking system, the banking facilities are not restricted to big cities. They can be extended to small towns and rural as well as underdeveloped areas,. Thus, this system helps in the development of backward regions of the country.

10. Effective Control:- Under the branch banking system, The Central bank than have a more efficient control over the banks because it has to deal only with few big banks and nor with each individual branch. This ensures better implementation of monetary policy.

❖ **Disadvantages and limitations of banking system**

1. Problem of Management:-Under the branch banking system a number of difficulties as regards management, supervision and control arise:

(a) since the management of the bank gets concentrated at the head office, the managers can afford to be lax and indulgent in their duties and are often involved in serious irregularities while using the funds.

(b) Since the branch manager has to seek permission from the head office on each and every matter, this results in unnecessary delay and red- tapism in the banking business.

2. Lack of Initiative:- Branch managers generally lack initiative on all-important matters; they cannot take independent decisions and have to wait for. The clearance signal from the head office.

3. Monopolistic Tendencies:-Branch banking encourages monopolistic tendencies in the banking system. A few big banks dominate and control the whole banking system of the country through their branches. This can lead to the concentration of resources into a few hands.

4. Regional Imbalances:-Under branch banking system, the financial resources collected in the smaller and backward regions are transferred to the bigger industrial centres. This encourages regional imbalances in the country.

5. Adverse Linkage Effect:-Under branch banking system, the losses and weaknesses of some branches also have their effect on other branches of the bank.

6. Inefficient Branches:-In this system, the weak and unprofitable branches continue to operate under the protection cover of the large and more profitable branches.

7. Other Defects:-Other defects of branch banking system are as follows:

- (a) Preferential treatment is given to the branches near the head office,
- (b) Higher interest rates are charged in the developed area to compensate for the lower rates charged in the backward areas,
- (c) There is concentration and unhealthy competition among the branches of different banks in big cities,
- (d) Many difficulties are faced when a bank opens branches in foreign countries.

❖ Relationship Between Banker And Customer

Basically, the relationship between banker and customer is contractual in nature. Since bank offers the variety of services to the customer, the relationship between the bank and the customer vary according to the type of service rendered by the bank.

- 1. Relationship of Debtor and Creditor:-** Banker accepts deposits of money from his customers for the purpose of lending and investment and repays it on demand as per the terms of the contract of deposit. In fact, deposit accepted by the bank is technically money loaned out to the bank from the depositors. Therefore, the general relationship between a depositor and the banker is a relation of the debtor and the creditor. The depositors are creditors and the bank is the debtor. However, the relationship between the banker and customer is directly opposite when the bank lends money to its customer. The bank becomes the creditor and the customer becomes the debtor.
- 2. Relationship of Trustee and Beneficiary:-** When a banker accepts items like securities or documents for safe custody or maintains escrow accounts of the customers, the relation between the banker and customer is a Trustee and the Beneficiary (Trustier). The bank is the Trustee and the customer is the beneficiary.

(Escrow is a separate type of bank account generally opened for various business deals like acquisition, transfer of shares and debentures of a

company, where money deposited in banks will be released only under fulfillment of certain conditions of a contract).

3. Relationship of Lessor and Lessee:- Similarly, when a customer hires a safe deposit locker from the bank, the relation between the bank and the customer is lessor and lessee. The bank is the lessor (licensor) and the hirer of safe deposit locker is the lessee (licensee/tenant).

4. Relationship of Principal and Agent:- When a bank collects cheques, bills and other instruments for customers, the relation between the bank and customer is that of Principal and Agent. The bank also makes regular payments of insurance premium rent etc. as per standing instruction received from the customer. In the above cases also the relation between the bank and the customer is of Principal and agent. The bank act as the agent and customer the principal.

5. Relationship of Assigner and Assignee:- An assignor is a person who transfers his security rights to a lender as collateral to the money borrowed by him. The transfer of Life Insurance Policies, National Saving Certificates, Supply bills etc. in the name of the bank is examples of assignment. The bank on whose name security rights are transferred by the assignor is called as assignee. On full payment of dues to the assignee, the assignor can get the security re-assigned in his name.

6. Relationship of Bailor and Bailee:- Bailment refers to delivery of goods by one person to another for some purpose under a condition that the goods to be returned to depositor when the purpose is accomplished or otherwise disposed of according to the directions of the person while delivering the goods (Sec 148 of contract act). The person delivering the goods is known as bailor and the person to whom goods are delivered is called bailee

Some examples of bailment are;

1. A car parked in a parking area where parking charge is collected. The car owner is the bailor and the contractor who collected the charge is the

- bailee. As a bailee, the contractor has to take care of the car parked at his parking area.
2. The articles, valuables, securities deposited in the safe deposit vault of the bank are also an example of bailment. In this case, the customer and banker relationship is bailor and bailee, besides their relationship as trustee and beneficiary. The bailor is still the rightful owner of the item though the item is in bailee's possession. As a bailee, the bank has to take care of the goods bailed.
 3. Relationship of Pledger and pledgee is also a type of bailment in which goods are delivered by one person to another as a security for payment of a debt or performance of a promise (Sec 172, Contract Act, 1872). For example, the borrower delivers the gold jewel to the bank as a security for the loan granted by the bank. In this case, the borrower who pledged the gold to the bank is the bailor (pledger) and the bank is the bailee (pledgee).

❖ BUSINESS OF BANKING COMPANIES

Forms of business in which banking companies may engage

- (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:-
- a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds,

- obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;
- b)** acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a ¹ [Managing Agent or Secretary and Treasurer] of a company;
 - c)** contracting for public and private loans and negotiating and issuing the same;
 - d)** the effecting, insuring, guaranteeing, underwriting, participating in Managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
 - e)** carrying on and transacting every kind of guarantee and indemnity business;
 - f)** Managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;
 - g)** acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;
 - h)** undertaking and executing trusts;
 - i)** undertaking the administration of estates as executor, trustee or otherwise;
 - j)** establishing and supporting or aiding in the establishment and support

of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

- k)** the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;
- l)** selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;
- m)** acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;
- n)** doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;
- o)** any other form of business which the Central Government may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section(1).

. Use of words "bank", "banker", "banking" or "banking company"

1. No company other than a banking company shall use as with its business] any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

2. No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words "bank", "banking" or "banking company".

3.Nothing in this section shall apply to

(i)a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;

(ii)any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956 (1 of 1956).]

Prohibition of trading

Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section (1) of section 6:

1 [PROVIDED that this section shall not apply to any such business as is specified in pursuance of clause (o) of sub-section (1) of section 6.]

this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (1) of section 6.

Disposal of non-banking assets

Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be:

PROVIDED that the banking company may, within the period of seven

years as aforesaid deal or trade in any such property for the purpose of facilitating the disposal thereof:

PROVIDED FURTHER that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

10. Prohibition of employment of Managing Agents and restrictions on certain forms of employment

(1) No banking company-

(a) shall employ or be managed by a Managing agent; or

(b) shall employ or continue the employment of any person-

who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

(i) (ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:

²[PROVIDED that nothing contained in this sub-clause shall apply to the payment by a banking company of-

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and

forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or]

(ii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(c) shall be managed by any person-

³[(i) who is a Director of any other company not being-

(a) a subsidiary of the banking company, or

(b) a company registered under section 25 of the Companies Act, 1956 (1 of 1956):

PROVIDED that the prohibition in this sub-clause shall not apply in respect of any such Director for a temporary period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or]

(ii) vocation; or

(iii) ¹[whose term of office as a person Managing the company is]for period exceeding five years at any one time:

² [PROVIDED that the term of office of any such person may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal/extension shall not be sanctioned earlier than two years from the date on which it is to come into force:

PROVIDED ALSO that where the term of office of such person is for an indefinite period, such term, unless it otherwise comes to an end earlier, shall come to an end immediately on the expiry of five years from the date of his appointment or on the expiry of three months from the date of

commencement of section 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963(55 of 1963), whichever is later:]

PROVIDED FURTHER that nothing in this clause shall apply to a Director, other than the Managing Director, of a banking company by reason only of his being such Director.

Explanation.--For the purpose of sub-clause (iii) of clause (b), the expression "remuneration", in relation to person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of expense actually incurred by him in the performance of his duties.

(2) In forming its opinion under sub-clause (iii) of clause (b) of sub-section (1), the Reserve Bank may have regard among other matters to the following:-

- (i) the financial condition and history of the banking company, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;
- (ii) the number of its branches or offices;
- (iii) the qualifications, age and experience of the person concerned;
- (iv) the remuneration paid to other persons employed by the banking company or to any person occupying a similar position in any other banking company similarly situated; and
- (v) the interests of its depositors.

1[***].

(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.]

2[10A. Board of Directors to include persons with professional or other experience

(1) Notwithstanding anything contained in any other law for the time being in force, every banking company,-

(a) in existence on the commencement of section 3 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), or shall comply with the requirements of this section:

PROVIDED that nothing contained in this sub-section shall apply to a banking company referred to in clause (a) for a period of three months from such commencement.

(2) Not less than fifty-one per cent, of the total number of members of the Board of Directors of a banking company shall consist of persons, who-

(a) shall have special knowledge or practical experience in respect of one or more of the following matters, namely:-

- (i) accountancy,
- (ii) agriculture and rural economy,
- (iii) banking,
- (iv) co-operation,
- (v) economics,
- (vi) finance,
- (vii) law,
- (viii) small-scale industry,
- (ix) any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the banking company:

PROVIDED that out of the aforesaid number of Directors, not less than two shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small- scale

industry; and

(b) shall not-

(1) have substantial interest in, or be connected with, whether as employee, manager or Managing agent,-

(i) registered under section 25 of the Companies Act, 1956 (1 of 1956),or

(ii) any firm,

which carries on any trade, commerce or industry and which, in either case, is not a small-scale industrial concern, or

(2) be proprietors of any trading, commercial or industrial concern, not being a small-scale industrial concern.

[(2A) Not with standing anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force,-

(i) no Director of a banking company, other than its Chairman or whole-time Director, by whatever name called, shall hold office continuously for a period exceeding eight years;

(ii) a Chairman or other whole-time Director of a banking company who has been removed from office as such Chairman, or whole-time Director, as the case may be, under the provisions of this Act shall also cease to be a Director of the banking company and shall also not be eligible to be appointed as a Director of such banking company, whether by election or co-option or otherwise, for a period of four years from the date of his ceasing to be the -Chairman or whole-time Director as the case

maybe.

(3) If, in respect of any banking company the requirements, as laid down in subsection (2), are not fulfilled at any time, the Board of Directors of such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of re-constituting the Board under sub-section (3), it is necessary to retire any Director or

Directors, the Board may, by lots drawn in such manner as may be prescribed, decide which Director or Directors shall cease to hold office and such decision shall be binding on every Director of the Board.

Where the Reserve Bank is of opinion that the composition of the Board of Directors of a banking company is such that it does not fulfil the requirements of subsection (2), it may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company to so re-constitute its Board of Directors as to ensure that the said requirements are fulfilled and, if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that Bank may, after determining, by lots drawn in such manner as may be prescribed, the person who ought to be removed from the membership of the Board of Directors, remove such person from the office of the Director of banking company and with a view to complying with the provision of sub-section

(2) appoint a suitable person as a member of the Board of Directors in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its Director.

(6) Every appointment, removal or reconstitution duly made, and every election duly held, under this section shall be final and shall not be called into question in any court.

(7) Every Director elected or, as the case may be, appointed under this section shall hold office until the date up to which his predecessor would have held office, if the election had not been held, or, as the case may be, the appointment had not been made.

(8) No act or proceeding of the Board of Directors of a banking company shall be invalid by reason only of any defect in the composition thereof or on the ground that it is subsequently discovered that any of its members did not fulfil the requirements of this section.

10B. Banking company to be managed by who time Chairman

¹ [(1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of the Banking Regulation (Amendment) Act,1994 (20 of 1944),or which comes into existence thereafter shall have one of its Directors, who may be appointed on a whole-time or a part-time basis, as Chairman of its board of Directors, and where he is appointed on a whole-time basis, as Chairman of its board of Directors, he shall be entrusted with the management of the whole of the affairs of the banking company:

PROVIDED that the Chairman shall exercise his powers subject to the superintendence, control and direction of the board of Directors.

(1A) Where a Chairman is appointed on a part-time basis,-

(i) such appointment shall be with the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval;

(ii) the management of the whole of the affairs of such banking company shall be entrusted to a Managing Director who shall exercise his powers subject to the superintendence, control and direction of the board of Directors.]

(2) ¹ [Every Chairman of the board of Directors who is appointed on a whole-time basis and every Managing Director] of a banking company shall be in the whole- time employment of such company and shall hold office for such period, not exceeding five years, as the board of Directors may fix, but shall, subject to the provisions of this section, be eligible for re-election of reappointment:

PROVIDED that nothing in this sub-section shall be construed as prohibiting a Chairman from being a Director of a subsidiary of the banking company or a Director of a company registered under section 25 of the Companies Act, 1956 (1 of 1956).

(3) Every person holding office on the commencement of section 3 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), as Managing Director of a banking company shall-

(a) if there is a Chairman of its board of Directors, vacate office on such commencement, or

(b) if there is no Chairman of its board of Directors, vacate office on the date on which the Chairman of its board of Directors is elected or appointed in accordance with the provisions of this section.

(4) ² [Every Chairman who is appointed on a whole-time basis and every Managing Director of a banking company shall be person who has special knowledge and practical experience of-

(a) the working of a banking company, or of the State Bank of India or any subsidiary bank or a financial institution, or

(b) financial, economic or business administration:

PROVIDED that a person shall be disqualified for being a ¹ [Chairman who is appointed on a whole time basis or a Managing Director], if be-

(a) is a Director of any company other than a company referred to in the proviso to sub-section (2), or

(b) is a partner of any firm which carries on any trade, business or industry, or

(c) has substantial interest in any other company or firm, or

(d) is a Director, manager, Managing agent, partner or proprietor of any trading, commercial or industrial concern, or

(e) is engaged in any other business or vocation.

(5) ² [A Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] of a banking company may, by writing, under his hand addressed to the company, resign his office, ³[* **].

⁴ [(5A) ⁵ [A Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] whose term of office has come to an end, either by reason of his resignation of his office, shall, subject to the approval of the Reserve Bank, continue in office until his successor assumes office.

Without prejudice to the provisions of section 36AA where the Reserve Bank is of opinion that any person who, is, or has been elected to be, the ⁶ [Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director] of a banking company is not a fit and proper person to hold such office, it may, after giving to such person and to the banking

company a reasonable opportunity of being heard by order in writing, require the banking company to elect or appoint any other person as the ⁷[Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director]and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the ¹ [Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director], the Reserve Bank may, by order, remove the first-mentioned person from the office of the ² [Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director]of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the ³ [Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director] of such banking company and any person elected or ⁴ [appointed as Chairman on a whole-time basis or Managing Director] under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

(6) The banking company and any person against whom an order of removal is made under sub-section (6) may, within thirty days from the date of communication to it or to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (6), shall be final and shall not be called into question in any court.

(7) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit ⁵ [the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director]

to undertake such part-time honorary work as is not likely to interfere with his duties as ⁶[such Chairman or Managing Director].

(8) Notwithstanding anything contained in this section, where a person ⁶[appointed on a whole-time basis, as Chairman of the board of Directors or the Managing Director]dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the banking company may, with the approval of the Reserve Bank, make suitable arrangements for

carrying out the ¹ [duties of Chairman or Managing Director] for a total period not exceeding four months.]

²[10BB. Power of Reserve Bank to appoint ³[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company

(1) Where the office, of the ⁴ [Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible under sub-section (4) of section 10B to be so appointed, to be the ⁵ [Chairman of the board of Directors appointed on a whole-time basis or a Managing Director]of the banking company and where the person so appointed is not a Director of such banking company, he shall, so long as he holds the office of the ⁶ [Chairman of the board of Directors appointed on a whole-time basis or a Managing Director], be deemed to be Director of the banking company.

(2) The ⁷ [Chairman of the board of Directors appointed on a

whole-time basis or a Managing Director] so appointed by the Reserve Bank shall be in the whole-time employment of the banking company and shall hold office for such period not exceeding three years, as the Reserve Bank may specify, but shall, subject to other provisions of this Act, be eligible for reappointment.

(3) The ⁸ [Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] so appointed by the Reserve Bank shall draw from the banking company such pay and allowances as the Reserve Bank may determine and may be removed from office only by the Reserve Bank.

Save as otherwise provided in this section, the provisions of section 10B shall, as far as may be, apply to the ⁹[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] appointed by the Reserve Bank under subsection (1) as they apply to a ¹ [Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] appointed by the banking company.]

²[10C. Chairman and certain Directors not to be required to hold qualification shares

³ [Chairman of the board of Directors who is appointed on a whole-time basis or a Managing Director] of a banking company (by whomsoever appointed) and a Director of a banking company (appointed by the Reserve Bank under section 10A) shall not be required to hold qualification shares in the banking company.]

10D. Provisions of sections 10A and 10B to override all other laws, contracts, etc

Any appointment or removal of a ⁴ [Director, Chairman of the board of Directors who is appointed on a whole-time basis or a

Managing Director] in pursuance of section IOA or section 10B⁵ [or section 10BB] shall have effect and any such person shall not be entitled to claim any compensation for the loss or termination of office, notwithstanding anything contained in any law or in any contract, memorandum or articles of association.]

11. Requirement as to minimum paid-up capital and reserves

(1) Notwithstanding anything contained in⁶ [section 149 of the Companies Act, 1956 (1 of 1956)], no banking company in existence on the commencement of this Act, shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business⁷ [in India], and no other banking company shall after the commencement of this Act, commence or carry on business⁸ [in India]¹ [unless it complies with such of the requirements of this section as are applicable to it].

²[(2) In the case of a banking company incorporated outside India-

(a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and

(b) ³ [the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities-

(i) an amount which shall not be less than the minimum

required by clause (a);and

(ii) as soon as may be after the expiration of each ⁴ [* * *] year, an amount calculated at twenty percent of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account prepared with reference to that year under section29:]

PROVIDED that any such banking company may at any time replace-

(i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;

(ii) any cash so deposited by unencumbered approved securities of an equal value.]

⁵ [(2A) Notwithstanding anything contained in sub-section(2), the Central Government may, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company under sub-section(2),in relation to its deposit liabilities in India, declare by order in writing that the provisions of sub-clause (ii) of clause (b) of sub-section (2) shall not apply to such banking company for such period as may be specified in the order.]

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than-

(i) if it has places of business in more than one State, five lakhs of rupees, and if any such place or places of business is or are situated in the city of Bombay or Calcutta or both, ten lakhs of rupees;

(ii) if it has all its places of business in one State none of which is situated in the city of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, plus ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, plus twenty-five thousand rupees in respect of each place of business situated elsewhere in the State otherwise than in the same district:

PROVIDED that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

PROVIDED FURTHER that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees:

¹ [PROVIDED FURTHER that in the case of every clause applies and which commences banking business for the first time after the commencement of the Banking Companies (Amendment) Act, 1962 (36 of 1962), the value of its paid-up capital shall not be less than five lakhs of rupees;]

if it has all its places of business in one State, one or more of which is or are situated in the city of Bombay or Calcutta, five lakhs of rupees, plus twenty-five thousand rupees in respect of each place of business situated outside the city of Bombay or Calcutta, as the case maybe: PROVIDED that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation.--For the purposes of this sub-section, a place of business situated ¹ [in a State] other than that in which the principal place of

business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same State as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under²[**

*) sub-section (2) by any banking company incorporated³ [outside India] shall, in the event of the company ceasing for any reason to carry on banking business⁴ [in India], be an asset of the company on which the claims of all the creditors of the company⁵ [in India] shall be a first charge.

⁶[(5) For the purposes of this section,-

(a) "place of business" means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed, or moneys lent;

(b) "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.]

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

⁷[12. Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders.--

(1) No banking company shall carry on business in India, unless it satisfies the following conditions, namely:-

(i) that the subscribed capital of the company is not less than one-half of the authorised capital, and the paid-up capital is not less than one-half of the subscribed capital and that, if the capital is increased, it complies with the

conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;

¹[(ii) that, notwithstanding anything contained in the Companies Act, 1956(1 of 1956), the capital of such banking company consists of--

(a) equity shares only; or

(b) equity shares and preference shares:

PROVIDED that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the each class of preference shares may be issued:

PROVIDED further that no holder of the preference share, issued by the company, shall be entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956(1 of 1956);]

²[***]

(2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights ³ [on poll] ⁴ [in excess of ⁵ (ten per cent)] of the total voting rights of all the shareholders of the banking company.

⁶ [PROVIDED that the Reserve Bank may increase, in a phased manner, such ceiling on voting rights from ten per cent. to twenty-six per cent.]

(3) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company on the ground that the title to the said share vests in a person other than the registered holder:

PROVIDED that nothing contained in this sub-section shall bar a suit or other proceeding-

(a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or

(b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

(4) Every Chairman, Managing Director or chief executive officer by whatever name called of a banking company shall furnish to the Reserve Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Reserve Bank may, by order, require and in such form and at such time as maybe specified in the order.]

1[12A. Election of new Directors

(1) The Reserve Bank may, by order, require any banking company to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Act fresh Directors, and the banking company shall be bound to comply with the order.

(2) Every Director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any court.]

1 [12B. Regulation of acquisition of shares or voting rights

(1) No person (hereinafter referred to as "the applicant") shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent. or more of the paid-up share capital of such banking company or entitles him to exercise five per cent. or more of the voting rights in such banking company.

Explanation 1.--For the purposes of this sub-section,--

(a) "associate enterprise" means a company, whether incorporated or not, which,--

(i) is a holding company or a subsidiary company of the applicant; or

(ii) is a joint venture of the applicant; or

(iii) controls the composition of the Board of Directors or other body governing the applicant; or

(iv) exercises, in the opinion of the Reserve Bank, significant influence on the applicant in taking financial or policy decisions; or

(v) is able to obtain economic benefits from the activities of the applicant;

(b) "relative" shall have the meaning assigned to it in section 6 of the Companies Act, 1956(1 of 1956);

(c) persons shall be deemed to be "acting in concert" who, for a common objective or purpose of acquisition of shares or voting rights in excess of the percentage mentioned in this sub-section, pursuant to

an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the banking company.

Explanation 2.--For the purposes of this Act, joint venture means a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.

(2) An approval under sub-section (1) may be granted by the Reserve Bank if it is satisfied that--

(a) in the public interest; or

(b) in the interest of banking policy; or

(c) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or

(d) in view of the emerging trends in banking and international best practices; or

(e) in the interest of the banking and financial system in India, the applicant is a fit and proper person to acquire shares or voting rights:

PROVIDED that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (1):

PROVIDED FURTHER that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages.

(3) Where the acquisition is by way of transfer of shares of a banking company and the Reserve Bank is satisfied that such transfer should not be permitted, it may, by order, direct that no such share shall be transferred to the proposed transferee and may further direct the banking company not to give effect to the transfer of shares and in case the transfer has been registered, the transferee shall not be entitled to exercise voting rights on poll in

any of the meetings of the banking company.

(4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.

Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (1) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.

(5) The decision of the Reserve Bank on the application made under sub-section

(1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank:

PROVIDED that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.

(7) The Reserve Bank may specify the minimum percentage of shares to be acquired in a banking company if it considers that the purpose for which the shares are proposed to be acquired by the applicant warrants such minimum shareholding.

(8) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent. of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent. of the total voting rights of all the shareholders of the banking company:

PROVIDED that the Reserve Bank shall not pass any such order without giving an opportunity of being heard to such person or persons acting in concert with him.]

13. Restriction on commission, brokerage, discount, etc. on sale of shares

Notwithstanding anything to the contrary contained in ¹ [sections 76 and 79 of the Companies Act, 1956 (1 of 1956)], no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half percent of the²[price at which the said shares are issued.]

³ [Explanation,--For the removal of doubts, it is hereby declared that the expression "price at which the said shares are issued" shall include amount or value of premium on such shares.]

14. Prohibition of charge on unpaid capital

No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

¹[14A. Prohibition of floating charge on assets

(1) Notwithstanding anything contained in section 6, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.

(3) Any banking company aggrieved by the refusal of a certificate under sub- section (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Central

Government.

(4)The decision of the Central Government where an appeal has been preferred to it under sub-section (3) or of the Reserve Bank where no such appeal has been preferred shall be final.]

15. Restrictions as to payment of dividend

² [(1)] No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

³ [(2)] Not with standing anything to the contrary contained in sub-section (1) or in the Companies Act, 1956(1 of 1956), a banking company may pay dividends on its shares without writing off-

(i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;

the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;

(ii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.]

¹[16. Prohibition of common Directors

²[(1) No banking company incorporated in India shall have as a Director in its Board of Directors any person who is a Director of any other banking company.

(1A) No banking company referred to in sub-section (1) shall have in its Board of Directors, more than three Directors who are Directors of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders to that banking company.]

② If immediately before the commencement of the Banking Companies (Amendment) Act, 1956 (95 of 1956), any person holding office as a director of a banking company is also a Director of companies which among themselves are entitled to exercise voting rights in excess of twenty percent of the total voting rights of all the shareholders of the banking company, he shall, within such period from such commencement as the Reserve Bank may specify in this behalf-

(a) either resign his office as a Director of the banking company;
or

(b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent, of the total voting rights of all the shareholders of the banking company as companies in which he wishes to continue to hold the office of a Director and resign his office as a Director in the other companies.]

³ [(3) Nothing in sub-section (1) shall apply to, or in relation to, any Director appointed by the Reserve Bank.]

4[17. Reserve Fund

(1) Every banking company incorporated in India shall create a reserve fund and¹ [* * *]shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the

reserve fund a sum equivalent to not less than twenty per cent of such profit.

² [(1A) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Reserve Bank and having regard to the adequacy of the paid-up capital and reserves of a banking company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not apply to the banking company for such period as may be specified in the order:

PROVIDED that no such order shall be made unless, at the time it is made, the amount in the reserve fund under sub-section (1), together with the amount in the share premium account is not less than the paid-up capital of the banking company.]

(2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation:

PROVIDED that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

³[18. Cash reserve.--

Every banking company, not being a scheduled bank, ⁴ [shall maintain in India on a daily basis] by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank, or by way of net balance in current accounts or in one or more of the aforesaid ways, a sum equivalent to ⁵ [such per cent.] of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight ¹ [as the Reserve Bank may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country] and shall submit to the Reserve Bank

before the twentieth day of every month are turn showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Fridays or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881(26 of 1881), at the close of business on the preceding working day.

Explanation.--In this section, and in section 24,-

(a) "liabilities in India" shall not include-

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;

(ii) any advance taken from the Reserve Bank ² [*or from the Development Bank*] or from the Exam Bank ³ [*or from the Reconstruction Bank*] ⁴ [*or from the National Housing Bank*] or from the National Bank ⁵ [*or from the Small Industries Bank*] by the banking company;

(iii) in the case of a Regional Rural Bank, also any loan taken by such bank from its Sponsor Bank;

(b) "fortnight" shall mean the period from Saturday to the second following Friday, both days inclusive;

(c) "net balance in current accounts" shall, in relation to a banking company, mean the excess, if any, of the aggregate of the credit balances in current account maintained by that banking company with State Bank of India or a subsidiary bank or a corresponding new bank over the aggregate of the credit balances in current account held by the said banks with

such banking company;

for the purposes of computation of liabilities, the aggregate of the liabilities of India, a subsidiary bank, a corresponding new bank, a regional rural bank, another banking company, a co-operative bank or any other financial institution notified by the Central Government in this behalf, shall be reduced by the aggregate of the liabilities of all such banks and institutions to the banking company;

(d) the expression "co-operative bank" shall have the meaning assigned to it in clause (cci) of section 56.

¹ [(1A) If the balance held by such banking company at the close of business on any day is below the minimum specified under sub-section (1), such banking company shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent. above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(1B) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

(1C) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities.]

(2) The Reserve Bank may, for the purposes of this section and

section 24, specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of a banking company and, if any question arises as to whether any transaction or class of transactions shall be regarded for the purposes of this section and section 24 as liability in India of a banking company, the decision of the Reserve Bank thereon shall be final.]

19. Restriction on nature of subsidiary companies

¹ [(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely: -

(a) the undertaking of any business which, under clauses (a) to (o) of sub-section (3) of section 6, is permissible for a banking company to undertake, or

(b) with the previous permission in writing of the Reserve Bank, the carrying on of the business of banking exclusively outside India, or

(c) the undertaking of such other business, which the Reserve Bank may, with the prior approval of the Central Government, consider to be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest.

Explanation. -For the purposes of section 8, a banking company shall not be deemed, by reason of its forming or having a subsidiary company, to be engaged indirectly in the business carried on by such subsidiary company.]

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent of the paid-up share capital of that company or thirty per cent of its own paid-up share capital and reserves, whichever is less:

PROVIDED that any banking company which is on the date any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefore if it reports the matter without delay to the Reserve

Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company shall not, after the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagagee or absolute owner, in any company in the management of which any Managing Director or manager of the banking company is in any manner concerned or interested.

² (4) Save as provided in clause (c) of sub-section (1), a banking company may form a subsidiary company to carry on the business of credit information in accordance with the Credit Information Companies (Regulation) Act, 2005."

¹[20. Restrictions on loans and advances

(1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956 (1 of 1956), no banking company shall,-

(a) grant any loans or advances on the security of its own shares,
or-

(b) enter into any commitment for granting any loan or advance to or on behalf of-

(i) any of its Directors,

(ii) any firm in which any of its Directors is interested as partner, manager, employee or guarantor, or

(iii) any company [not being a subsidiary of the banking company or a company registered under section 25 of the Companies Act, 1956 (1 of 1956), or a Government company] of which ² [or the subsidiary or the holding company of which] any of the Directors of the banking

company is a Director, Managing agent, manager, employee or guarantor or in which he holds substantial interest, or

(iv) any individual in respect of whom any of its Directors is a partner or guarantor.

(2) Where any loan or advance granted by a banking company is such that a commitment for granting it could not have been made if clause (b) of sub-section

(1) had been in force on the date on which the loan or advance was made, or is granted by a banking company after the commencement of section 5 of the Banking Laws (Amendment) Act, 1968(58 of 1968), but in pursuance of a commitment entered into before such commencement, steps shall be taken to recover the amounts due to the banking company on account of the loan, or advance together with interest, if any, due thereon within the period stipulated at the time of the grant of the loan or advance, or where no such period has been stipulated, before the expiry of one year from the commencement of the said section 5:

PROVIDED that the Reserve Bank may, in any case, on an application in writing made to it by the banking company in this behalf, extend the period for the recovery of the loan or advance until such date, not being a date beyond the period of three years from the commencement of the said section 5, and subject to such terms and conditions, as the Reserve Bank may deem fit:

PROVIDED FURTHER that this sub-section shall not apply if and when the Director concerned vacates the office of the Director of the banking company, whether by death, retirement, resignation or otherwise.

(3) No loan or advance, referred to in sub-section (2), or any part thereof shall be remitted without the previous approval of the Reserve Bank, and any remission without such approval shall be void and of no effect.

(4) Where any loan or advance referred to in sub-section (2), payable by any person, has not been repaid to the banking company within the period specified in that subsection, then, such person shall, if he is a Director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date.

Explanation.--In this section-

(a) "loans or advance" shall not include any transaction which the Reserve Bank may, having regard to the nature of the transaction, the period within which, and the manner and circumstances in which, any amount due on account of the transaction is likely to be realised, the interest of the depositors and other relevant considerations, specify by general or special order as not being a loan or advance for the purpose of this section;

(b) "Director" include a member of any board or committee in India constituted by a banking company for the purpose of Managing, or for the purpose of advising it in regard to the management of, all or any of its affairs.

(5) If any question arises whether any transaction is a loan or advance for the purposes of this section, it shall be referred to the Reserve Bank, whose decision thereon shall be final.]

¹[20A. Restrictions on power to remit debts

Notwithstanding anything to the contrary contained in section 293 of the Companies Act, 1956 (1 of 1956), a banking company shall not, except with the prior approval of the Reserve Bank, remit in whole or in part any debt due to it by-

(a) any of its Directors, or

(b) any firm or company in which any of its Directors is interested as Director, partner, Managing agent or guarantor, or

(c) any individual if any of its Directors is his partner or guarantor.

(2) Any remission made in contravention of the provisions of sub-section (1) shall be void and of no effect.]

21. Power of Reserve Bank to control advances by banking companies

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest ¹ [or in the interests of depositors] ² [or banking policy] so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(a) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, ³[as to- the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.]

¹ [(3) Every banking company shall be bound to comply with any directions given to it under this section.]

2[21A. Rates of interest charged by banking companies not to be subject to scrutiny by courts

Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.]

22. Licensing of banking companies

³ [(1) Save as hereinafter PROVIDED, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject of such conditions as the Reserve Bank may think fit to impose.]

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business ⁴ [in India], shall apply in writing to the Reserve Bank for a licence under this section:

PROVIDED that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of ¹ [this section] or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

PROVIDED FURTHER that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Banking may require to be satisfied by an inspection of the books of the company or otherwise that ²[***] the following conditions are fulfilled ,namely:-

³ [(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the future depositors;]

⁴ [(c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the

potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.]

¹ [(3A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.]

² [(4) The Reserve Bank may cancel a licence granted to a banking company under this section-

- (i) if the company ceases to carry on banking business in India; or
- (ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1);or
- (iii) if at any time, any of the conditions referred to in sub-section (3) ³[and sub-section (3A)] is not fulfilled:

PROVIDED that before cancelling a licence under clause (ii) or clause (iii)

of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government. The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.]

1[23. Restrictions on opening of new, and transfer of existing, places of business

(1) Without obtaining the prior permission of the Reserve Bank-

(a) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

(b) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

PROVIDED that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business, for the purpose of affording

banking facilities to the public on the occasion of an exhibition, a conference or a mela or any other like occasion.

(2) Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.

(3) The Reserve Bank may grant permission under sub-section (1) subject to such conditions as it may think fit to impose either generally or with reference to any particular case.

Where, in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted under this section.

¹ [(4A) Any regional rural bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank:

PROVIDED that the regional rural bank shall also send an advance copy of the application directly to the Reserve Bank.]

(4) For the purpose of this section "place of business" includes any sub-office, pay office, sub pay office and any place of business at which deposits are received, cheques cashed or moneys lent.]

24. Maintenance of a percentage of assets

(1)²[***]

(2)³[***]

⁴ [(2A) A scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 (2 of 1934) and every other banking company, in addition to the cash reserve which it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such percentage not exceeding forty per cent, of the total of its demand and time liabilities in India is on the last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall to maintained, in such form and manner, as may be specified in such notification.]

(2B) ⁵[***]

⁶ [(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than twenty days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its demand and time liabilities in India at the close of business on each alternate Friday during the month, or if any such Friday is a public holiday, at the close of business on the preceding workingday:

PROVIDED that every Regional Rural Bank shall also furnish a copy of the said return to the National Bank.]

(4)(a) If on any alternate Friday or, if such Friday is a public holiday, on the preceding working day, the amount maintained by a banking company at the close of business on that day falls below the minimum prescribed by or under ¹ [***] sub-section (2A) such banking company shall be liable to pay to the Reserve Bank in respect of that day's default, penal interest for that day at

therate of three per cent per annum above the bank rate on the amount by which the amount actually maintained falls short of the prescribed minimum on that day; and

(b) If the default occurs again on the next succeeding alternate Friday, or, if such Friday is a public holiday, on the preceding working day, and continues on succeeding alternate Fridays or preceding working days, as the case may be, the rate of penal interest shall be increased to a rate of five per cent per annum above the bank rate on each such shortfall in respect of that alternate Friday and each succeeding alternate Friday or preceding working day, if such Friday is a public holiday, in which the default continues.

(5)(a) Without prejudice to the provisions of sub-section (3), the Reserve Bank may require a banking company to furnish to it a return in the form and manner specified by it showing particulars of its assets maintained in accordance with this section and its demand and time liabilities in India, as at the close of business on each day of a month; and

(b) Without prejudice to the provisions of sub-section (4), on the failure of a banking company to maintain as on any day, the amount so required to be maintained by or under ² [***] sub-section (2A) the Reserve Bank may, in respect of such default, require the banking company to pay penal interest for that day as PROVIDED in clause (a) of sub-section (4) and if the default continues on the next succeeding working day, the penal interest may be increased as PROVIDED in clause (b) of sub-section (4) for the concerned days.

(6)(a) The penalty payable under sub-section (4) and sub-section (5) shall be paid within a period of fourteen days from the date on which a notice issued by the Reserve Bank demanding payment of the same is served on the banking company and in the event of failure of the banking company to pay the same within such period, the penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting banking company is situated, such direction to be made only upon an application made by the Reserve Bank in this behalf

to the court; and

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

(7) When under the provisions of clause (b) of sub-section (4), penal interest at the increased rate of five per cent, above the bank rate has become payable by a banking company, if thereafter the amount required to be maintained on the next succeeding alternate Friday, or if such Friday is a public holiday, the next preceding working day, is still below the prescribed minimum, every Director, manager or secretary of the banking company, who is knowingly and willfully a party to the default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent alternate Friday or the preceding working day, as the case may be, on which the default continues.

(8) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that the banking company had sufficient cause for its failure to comply with the provisions of 1 [***] sub-section (2A), the Reserve Bank may not demand the payment of the penal interest.

Explanation.--In this section, the expression "public holiday" means a day which is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881)].

25. Assets in India

² [(1) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of the business on the preceding working day, shall not be less than seventy-five percent of its demand and time liabilities in India.

② Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881) at the close of business on the preceding working day:]

rural bank shall also furnish a copy of the said return to the National Bank.]

③ For the purposes of this section,-

² [(a) "assets in India" shall be deemed to include export bills drawn in, and import bills drawn on and payable in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf and also such securities as the Reserve Bank may approve in this behalf notwithstanding that all or any of the said bills or securities are held outside India;]

³ [(b) "liabilities in India" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;]

⁴ [(c)] "quarter" means the period of three months ending on the last day of March, June, September or December.

26. Return of unclaimed deposits

Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts ⁵ [in India] which have not been operated upon for ten years ⁶ [* **]:

PROVIDED that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period:

1 [PROVIDED FURTHER that every regional rural bank shall also furnish a copy of the said return to the National Bank.]

2 [26A. Establishment of Depositor Education and Awareness Fund

(1) The Reserve Bank shall establish a Fund to be called the "Depositor Education and Awareness Fund" (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

PROVIDED that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking company shall be liable to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

(3) Where the banking company has paid outstanding amount referred to in subsection (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority or committee referred to in sub-section(5).

(4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes which may be necessary for the promotion of depositors' interests as may be specified by the Reserve Bank from time to time.

(5) The Reserve Bank shall, by notification in the Official Gazette,

specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.

(6) It shall be competent for the authority or committee appointed under subsection (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.]

27. Monthly returns and power to call for other returns and information

(1) Every banking company shall, before the close of the month succeeding that to which it relates, submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of business on the preceding working day.

¹ [(2) The Reserve Bank may at any time direct a banking company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of the banking company (including any business or affairs with which such banking company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act, and without prejudice to the generality of the foregoing power may call for information every half-year regarding ² [the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture].]

³ [(3). Every regional rural bank shall submit a copy of the return which it submits to the Reserve Bank under sub-section (1) also to the National Bank and the powers exercisable by the Reserve Bank under sub-section (2) may also be exercised by the National

Bank in relation to regional rural banks.]

4[28. Power to publish information

The Reserve Bank or the National Bank, or both, if they consider it in the public interest so to do, may ⁵ [publish -

(a) any information obtained by them under this Act in such consolidated form as they think fit;

(b) in such manner as they may consider proper, any credit information disclosed under the Credit Information Companies (Regulation) Act,2005.]

29. Accounts and balance-sheet

(1) At the expiration of each calendar year ¹ [or at the expiration of a period of twelve month sending with such date² as the Central Government may, by notification in the Official Gazette, specify in this behalf,] every banking company incorporated ³ [in India], in respect of all business transacted by it, and every banking company incorporated ⁴ [outside India], in respect of all business transacted through its branches ⁵ [in India], shall prepare with reference to ⁶ [that year or period, as the case may be,] a balance-sheet and profit and loss account as on the last working day of ⁷ [that year or the period, as the case may be] in the Forms set out in the Third Schedule or as near thereto as circumstances admit:

⁸ [PROVIDED that with a view to facilitating the transition from one period, of accounting to another period of-accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it

considers necessary or expedient for the preparation of, or for other matters relating to, the balance sheet or profit and loss account in respect of the concerned year or period, as the case maybe.]

(2) The balance-sheet and profit and loss account shall be signed-

(a) in the case of a banking company incorporated ⁹ [in principal officer of the company and where there are more than three Directors of the company, by at least three of those Directors, or where there are not more than three Directors, by all the Directors, and

(b) in the case of a banking company incorporated ¹⁰[outside India] by the manager or agent of the principal office of the company ¹¹[in India].

(3) Notwithstanding that the balance-sheet of a banking company is under sub- section (I) required to be prepared in a form other than the form ¹ [set out in Part I -of Schedule VI to the Companies Act, 1956 (1 of 1956)], the requirements of that relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

² [(3A) Notwithstanding anything to the contrary contained in sub-section (3) of section 210 of the Companies Act, 1956 (1 of 1956), the period to which the profit and loss account relates shall, in the case of a banking company, be the period ending with the last working day of the year immediately preceding the year in which the annual general meeting is held.]

³ [Explanation.--In sub-section (3A), "year" means the year or, as the case may be, the period referred to in sub-section (1).]

The Central Government, after giving not less than three months' notice of its intention so to do by a notification in the Official Gazette, may from time to time by like notification amend the Form set out in the Third Schedule ⁴[29A. Power in respect of associate enterprises

(1) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

(2) Notwithstanding anything to the contrary contained in the Companies Act, 1956(1 of 1956), the Reserve Bank may, at any time, cause an inspection to be made of any associate enterprise of a banking company and its books of account jointly by one or more of its officers or employees or other persons along with the Board or authority regulating such associate enterprise.

(3) The provisions of sub-sections (2) and (3) of section 35 shall apply mutatis mutandis to the inspection under this section.

Explanation.--"associate enterprise" in relation to a banking company includes an enterprise which--

- (i) is a holding company or a subsidiary company of the banking company; or
- (ii) is a joint venture of the banking company; or
- (iii) is a subsidiary company or a joint venture of the holding company of the banking company; or
- (iv) controls the composition of the Board of Directors or other body governing the banking company; or
- (v) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or

(vi) is able to obtain economic benefits from the activities of the banking company.]

¹ [(1) The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies.]

²[(1A) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking shall, before appointing re- appointing or removing any auditor or auditors, obtain the previous approval of the Reserve Bank.

(1B) Without prejudice to anything contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, where the Reserve Bank is of opinion that it is necessary in the public interest or in the interest of the banking company or its depositors so to do, ³ [it may at any time by order direct that a special audit of the banking company's accounts, for any such transaction or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order either appoint a person duly qualified under any law for the time being in

force to be an auditor of companies or direct the auditor of the banking company himself to conduct such special audit] and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the company.

(1C) The expenses of, or incidental to ¹[the special audit] specified in the order made by the Reserve Bank shall be borne by the banking company.]

(2) The auditor shall have the powers of, exercise the functions

vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by ²[section 227 of the Companies Act, 1956 (1 of 1956), ³ [and auditors, if any, appointed by the law establishing, constituting or forming the banking company concerned.]

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in the case of a banking company incorporated ⁴[in India], state in his report,-

- (a) whether or not the information and explanation required by him have been found to be satisfactory;
- (b) whether or not the transactions of the company which have come to his notice have been within the powers of the company;
- (c) whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;
- (d) whether the profit and loss account shows a true balance ⁵[of profit or loss] for the period covered by such account;
- (e) any other matter which he considers should be brought to the notice of the shareholders of the company.

30. Submission of returns

The accounts and balance-sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer:

PROVIDED that the Reserve Bank may in any case extend the said period

of three months for the furnishing of such returns by a further period not exceeding three months:

¹[PROVIDED FURTHER that a regional rural bank shall furnish such returns also to the National Bank.]

31. Copies of balance-sheets and accounts to be sent to Registrar

² [(1) Where a banking company in any year furnishes its accounts and balance-sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance-sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance-sheet and of the auditor's report, and, in the case of a private company, copies of the balance-sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956 (1 of 1956); and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.]

(2) When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 31, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

32. Display of audited balance-sheet by companies incorporated outside India

Every banking company incorporated ³ [outside India] shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office ⁴[in India] a copy of its last

audited balance-sheet and profit and loss account prepared under section 29, and shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies of its complete audited balance-sheet and profit and loss account relating to its banking business as soon as they are available, and shall keep the copies so displayed until copies of such subsequent accounts are available.

33. Accounting provisions of this Act not retrospective

Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

¹[34A. Production of documents of confidential nature

(1) Notwithstanding anything contained in section 11 of the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, no banking company shall, in any proceeding under the said Act or in any appeal or other proceeding arising there from or connected therewith, be compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclosure of such statement or information would involve disclosure of information relating to-

(a) any reserves not shown as such in its published balance-

sheet; or

(b) any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.

If, in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account principles of sound banking and all relevant circumstances concerning the banking company, furnish to the authority a certificate stating that the authority shall not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the amount specified by it in the certificate, and the certificate of the Reserve Bank on such question shall be final and shall not be called in question in any such proceeding.

¹ [(3) For the purposes of this section "banking company" includes the Reserve Bank, ² (***) , the Exim Bank, ³ [the Reconstruction Bank], ⁴ [the National Housing Bank], the National Bank, ⁵ [the Small Industries Bank] the State Bank of India, a corresponding new bank, a regional rural bank and a subsidiary bank.]

Section 35 - Inspection

(1) Notwithstanding anything to the contrary contained in ⁶ [section 235 of the Companies Act, 1956 (1 of 1956)], the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one

or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

⁷ [(1A) (a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time, may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and

(b) A copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.]

(2) It shall be the duty of every Director or other officer ¹ [or employee] of the banking company to produce to any officer making an inspection under sub- section (1) ² [or a scrutiny under sub-section (1A)] all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) ³ [for a scrutiny under sub-section (1A)] may examine on oath any Director or other officer ⁴ [or employee] of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection ⁵ [or scrutiny] made under this section, and the Central

Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing-

- (a) prohibit the banking company from receiving fresh deposits;
- (b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

PROVIDED that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

[Explanation.--For the purpose of this section, the expression "banking company" shall include-

- (i) in the case of a banking company incorporated outside India, all its branches in India; and
- (ii) in the case of a banking company incorporated in India-
 - (a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and
 - (b) all its branches whether situated in India or outside India.]

² [(6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks may (without prejudice to the exercise of such powers by the Reserve Bank in relation to

any regional rural bank whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks, and accordingly, sub-sections (1) to (5) shall apply in relation to regional rural banks as if every reference therein to the Reserve Bank included also a reference to the National Bank.]

3[35A. Power of the Reserve Bank to give directions

(1) Where the Reserve Bank is satisfied that-

(a) in the ⁴[public interest];or

⁵[(aa) in the interest of banking policy; or]

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

4[Section 35AA – Power of Central Government to authorize Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process –

The Central Government may, by order, authorize the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

Explanation- For the purposes of these section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

Section 35AB – Power of Reserve Bank to issue directions in respect of stressed assets.

- (1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.
- (2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets]

Section 35B - Amendments of provisions relating to appointments of Managing Directors, etc., to be subject to previous approval of the Reserve Bank

- (1) In the case of a banking company-
 - (a) no amendment of any provision relating to ¹ [the maximum permissible number of Directors or] the ²[appointment or re-appointment or termination of appointment or remuneration of a Chairman, a] ³ [Managing Director or any other Director, whole-time or otherwise] or of a manager or a chief executive officer by whatever name called, whether that provision be contained in the company's memorandum or articles of association, or in an agreement entered into by it, or in any

resolution passed by the company in general meeting or by its Board of Directors shall have effect unless approved by the Reserve Bank;

- (3) ⁴ [(b) no appointment or re-appointment or termination of appointment of a Chairman, a Managing or whole-time Director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Reserve Bank.]

⁵[Explanation.--For the purpose of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office⁶[of the Chairman or the manager] or the chief executive officer by whatever name called or the Managing Director, or any other Director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.]

(1) Nothing contained in sections ¹ [268 and 269, the proviso to sub-section (3) of section 309, sections 310 and 311, the proviso to section 387, and section 388](in so far as section 388 makes the ² [provisions of sections 269, 310] and 311 apply in relation to the manager of a company) of the Companies Act, 1956 (1 of 1956), shall ³ [apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section(1)].

⁴[(2A) Nothing contained in section 198 of the Companies Act, 1956 (1 of 1956) shall apply to a banking company and the provisions of sub-section (1) of section 309 and of section 387 of that Act shall, in so far as they are applicable to a banking company, have effect as if no reference had been made in the said provisions to section 198 of that Act.]

(2) No act done by a person ⁵ [as Chairman or a Managing or whole-time Director] or a Director not liable to retire by rotation or a manager or a chief executive officer by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his ⁶ [appointment or reappointment] had not taken effect by reason of any of the provisions of this Act; but nothing in this sub-section shall be construed as rendering valid any act done by such person after his ⁷ [appointment or reappointment] has been shown to the banking company not to have had effect.]

36. Further powers and functions of Reserve Banks

(1) The Reserve Bank may-

(a) caution or prohibit banking companies or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provision of section ¹ [44A], assist, as intermediary or otherwise, in proposals for the amalgamation of such banking companies;

(c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of sub-section (1) of section 18 of the Reserve Bank of India Act, 1934 (2 of 1934);

² [(d) ³ [at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do,] by order in writing and on

such terms and conditions as may be specified there in-

(i) require the banking company to call a meeting of its Directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company; or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to which the proceedings at any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being conducted and make a report thereon;

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary¹[***].]

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under clause(2) of

section 17 of the Reserve Bank of India Act, 1934 (2 of 1934), including in such report its suggestions, if any, for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

2[36A. Certain provisions of the Act not to apply to certain banking companies

(1) The provisions of section 11, sub-section (1) of section 12, and sections 17, 18, 24 and 25 shall not apply to a banking company-

(a) which, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959), has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

(b) whose licence has been cancelled under section 22, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959).

Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and thereupon

all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.]

❖ CONTROL OVER MANAGEMENT

36AA. Power of Reserve Bank to remove managerial and other persons from office

(1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, ² [any Chairman, Director,] chief executive officer (by whatever name called) or other officer or employee of the banking company.

(2) No order under sub-section (1) shall be made ³ [unless the Chairman, Director] or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order:

PROVIDED that if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors, the Reserve Bank may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, ⁴ [the Chairman or, as the case may be, Director or chief executive officer] or other officer or employee, shall not, with effect from the date of such order--

- (a) ⁵[act as such Chairman or Director] or chief executive officer or other officer or employee of the banking company;
- (b) in any way, whether directly or indirectly, be concerned with, or take part in the management of, the banking company.

(a) Any person against whom an order of removal has been made under sub-section (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.

(b) The decision of the Central Government on such appeal, and subject thereto, the order made by the Reserve Bank under sub-section (1), shall be final and shall not be called into question in any court.

(4) Where any order is made in respect of ¹ [a Chairman, Director] or chief executive officer or other officer or employee of a banking company under sub-section (1), he shall cease to be ² [a Chairman or, as the case may be, a Director,] chief executive officer or other officer or employee of the banking company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.

(5) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

(6) Where an order under sub-section (1) has been made, the Reserve Bank may, by order in writing, appoint a suitable person in place of ³ [the Chairman or Director], or chief executive officer

or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

(7) Any person appointed as ⁴ [Chairman, Director or chief executive officer] or other officer or employee under this section shall,-

(a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) not incur any obligation or liability by reason only of his being a ¹ [Chairman, Director or chief executive officer] or other officer or employee for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(8) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

Section 36AB - Power of Reserve Bank to appoint additional Directors

(1) If the Reserve Bank is of ² [opinion that in the interest of banking policy or in the public interest or] in the interests of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional Directors of the banking company:

³[***]

(2) Any person appointed as additional Director in pursuance of this

section-

- (a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;
 - (b) shall not incur any obligation or liability by reason only of his being a Director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation there to; and
 - (c) shall not be required to hold qualification-shares in the banking company.
- (3) For the purpose of reckoning any proportion of the total number of Directors of the banking company, any additional Director appointed under this section shall not be taken into account.

36AC. Part IIA to override other laws

Any appointment or removal of a Director, chief executive officer or other officer or employee in pursuance of section 36AA or section 36AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or any other law for the time being in force or in any contract or any other instrument.]

❖ SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

1¹[2[36B. High Court defined.-

In this Part and in Part IIIA "High Court", in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated.]]

37. Suspension of business

The ³ [High Court] may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(1) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted:

PROVIDED that the ¹ [High Court] may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the ² [High Court] shall call for a report from the Reserve Bank on the affairs of the banking company on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

³ [(3) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.]

⁴ [(4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to

the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.]

5[38. Winding up by High Court.-

(1) Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956 (1 of 1956), but without prejudice to its powers under sub-section (1) of section 37 of this Act, the High Court shall order the winding up of a banking company-

(a) if the banking company is unable to pay its debts; or

(a) if an application for its winding up has been made by the Reserve Bank under section 37 or this section.

(2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of section 35.

(3) The Reserve Bank may make an application under this section for the winding up of a banking company-

(a) if the banking company-

(i) has failed to comply with the requirements specified in section 11; or

(ii) has by reason of the provisions of section 22 become disentitled to carry on banking business in India; or

(iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (4) of section 35 or under clause (b) of subsection (3A) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934); or

(iv) having failed to comply with any requirement of this Act

other than the requirements laid in section 11, has continued such failure, or, having contravened any provision of this Act continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; or

(b) if in the opinion of the Reserve Bank-

(i) a compromise or arrangement sanctioned by a court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interests of its depositors.

Without prejudice to the provisions contained in section 434 of the Companies Act, 1956 (I of 1956) a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(4) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar.]

¹[38A. Court liquidator.-

(1) There shall be attached to every High Court a Court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto

as the High Court may impose.

2^[***]

(4) Where having regard to the number of banking companies wound up and other circumstances of the case, the Central Government is of opinion that it is not necessary or expedient to attach for the time being a Court liquidator to a High Court, it may, from time to time, by notification in the Official Gazette, direct that this section shall not have effect in relation to that High Court.]

3[39. Reserve Bank to be official liquidator.-

4^[(1)] Notwithstanding anything contained in section 38A of this Act or in section

448 or section 449 of the Companies Act, 1956(1 of 1956), where in any proceeding for the winding up by the High Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank, the State Bank of India or any other bank notified by the Central Government in this behalf or any individual, as stated in such application shall be appointed as the official liquidator of the banking company in such proceeding and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.]

5 ^[(2)] Subject to such directions as may be made by the High Court, the remuneration of the official liquidator appointed under this section, the cost and expenses of this establishment and the cost and expenses of the winding up shall be met out of the assets of the banking company which is being wound up, and notwithstanding anything to the contrary contained in any other law for the time being in force, no fees shall be payable to the Central Government, out of the assets of the banking company.]

1[39A. Application of Companies Act to liquidators.-

(1) All the provisions of the Companies Act, 1956 (1 of 1956), relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or section 39.

(2) Any reference to the "official liquidator" in this Part and Part IIIA shall be construed as including a reference to any liquidator of a banking company.]

40. Stay of proceedings

Notwithstanding anything to the contrary contained in ² [section 466 of the Companies Act, 1956 (1 of 1956)], the ³ [High Court] shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the ⁴ [High Court] is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

⁵[41. Preliminary report by official liquidator.-

Notwithstanding anything to for the contrary contained in section 455 of the Companies Act, 1956 (1 of 1956), where a winding up order has been made in respect of a banking company whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), the official liquidator shall submit a preliminary report to the High Court within two months from the date of the winding up order or where the winding up order has been made before such commencement, within two months from such commencement, giving the information required by that section so far as it is available to him and also stating the amount of assets of the banking company in cash which are in his custody or under his control on the date of the report and the amount of its assets which are likely to be collected in cash before the expiry of that period of two months in order that such assets may be applied speedily towards the making of preferential payments under section 530 of the Companies Act, 1956, and in the discharge, as far as possible, of the liabilities and obligations of the banking company to its depositors and other creditors in accordance with the provisions hereinafter contained; and the official liquidator shall make for the purposes aforesaid every endeavour to collect in cash as such of the assets of the banking company as practicable.

41A. Notice to preferential claimants and secured and unsecured creditors

(1) Within fifteen days from the date of the winding up order of a banking company or where the winding up order has been made before the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon—

(a) every claimant entitled to preferential payment under section 530 of the Companies Act, 1956(1 of 1956),and

(b) every secured and every unsecured creditor, to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.

(2) Every notice under sub-section (1) sent to a claimant having a claim under section 530 of the Companies Act, 1956 (1 of 1956), shall state that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under section 530 of the Companies Act, 1956, in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant fails to comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under

section 530 of the Companies Act, 1956 (1 of 1956), in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if a secured creditor fails to comply with the notice sent to him under sub-section (1), the official liquidator shall himself value the security and such valuation shall be binding on the creditor.]

42. Power to dispense with meetings of creditors, etc

Notwithstanding anything to the contrary contained in ¹ [2 [section 460] of the Companies Act, 1956 (1 of 1956)], the ³ [High Court] may, in the proceedings for winding up a banking company, dispense with any meetings of creditors or contributories ⁴ [***] if it considers that no object will be secured thereby sufficient to justify the delay and expense.

⁵[43. Booked depositors' credits to be deemed proved.-

In any proceeding for the winding up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in ⁶ [section 474 of the Companies Act, 1956 (1 of 1956)], the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.]

⁷[43A. Preferential payments to depositors.-

(1) In every proceeding for the winding up of a banking company where a winding up order has been made, whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960, (37 of 1960) within three months from the date of the winding up order or where the winding up order has been made before such commencement, within three months therefrom, the preferential payments referred to in section 530 of the Companies Act, 1956 (1 of 1956), in respect of which

statements of claims have been sent within one month from the date of the service of the notice referred to in section 41 A, shall be made by the official liquidator or adequate provision for such payments shall be made by him.

(2) After the preferential payments as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months-

(a) in the first place to every depositor in the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter;

(b) in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less, in priority to all other debts from out of the remaining assets of the banking company available for payment to general creditors:

PROVIDED that the sum total of the amounts paid under clause (a) and clause

(b) to any one person who in his own name (and not jointly with any other person) is a depositor in the savings bank account of the banking company and also a depositor in any other account, shall not exceed the sum of two hundred and fifty rupees.

(3) Where within the aforesaid period of three months full payment cannot be made of the amounts required to be paid under clause (a) or clause (b) of sub-section (2) with the assets in cash, the official liquidator shall pay within that period to every depositor under clause (a) or, as the case may be, clause (b) of that sub-section on a pro rata basis so much of the amount due to the deposit or under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected

by the official liquidator in cash.

(4) After payments have been made first to depositors in the savings bank account and then to the other depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilised for payment on a pro rata basis of the debts of the general creditors and of the further sums, if any, due to the depositors; and after making adequate provision for payment on a pro rata basis as aforesaid of the debts of the general creditors, the official liquidator shall, as and when the assets of the company are collected in cash, make payment on a pro rata basis as aforesaid, of the further sums, if any, which may remain due to the depositors referred to in clause (a) and clause (b) of subsection(2).

(5) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to every secured creditor may be redeemed by the official liquidator-

(a) where the amount due to the creditor is more than the value of the securities as assessed by him or, as the case may be, as assessed by the official liquidator, on payment of such value; and

(b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

PROVIDED that where the official liquidator is not satisfied with the valuation made by the creditor, he may apply to the High Court for making a valuation.

(6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with ¹ [the provisions of this

section], cannot be found or is not readily traceable, adequate provision shall be made by the official liquidator for such payment.

(7) For the purposes of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely:-

- (a) payments to preferential claimants under section 530 of the Companies Act, 1956 (1 of 1956);
- (b) payments under clause (a) of sub-section (2) to the depositors in the savings bank account;
- (c) payments under clause (b) of sub-section (2) to the other depositors;
- (d) payments to the general creditors and payments to the depositors in addition to those specified in clause (a) and clause (b) of sub-section (2).

(8) The payments of each different class specified in sub-section (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.]]

2 [(9) Nothing contained in sub-sections (2), (3), (4), (7) and (8) shall apply to a banking company in respect of the depositors of which the Deposit Insurance Corporation is liable under section 16 of the Deposit Insurance Corporation Act, 1961, (47 of 1961).

(10) After preferential payments referred to in sub-section (1) have been made or adequate provision has been made in respect thereof, the remaining assets of the banking company referred to in sub-section (9) available for payment to general creditors shall be utilised for payment on *pro rata* basis of the debts of the general creditors and of the sums due to the depositors:

PROVIDED that where any amount in respect of any deposit is to be paid by the liquidator to the Deposit Insurance Corporation under section 21 of the Deposit Insurance Corporation Act, 1961 (47 of 1961), only the balance, if any, left after making the said payment shall be payable to the depositor.]

1[44. Powers of High Court in voluntary winding up.-

(1) Notwithstanding anything to the contrary contained in section 484 of the Companies Act, 1956 (1 of 1956), no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue.

(2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the court.

(3) Without prejudice to the provisions contained in sections 441 and 521 of the Companies Act, 1956 (1 of 1956), the High Court may of its own motion and shall on the application of the Reserve Bank, order the winding up of a banking company by the High Court in any of the following cases, namely:-

(a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding up proceedings the company is not able to meet its debts as they accrue; or

(b) where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued without detriment to the interests of the depositors.]

2[44A. Procedure for amalgamation of banking companies.-

(1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting of the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares (to be paid to the dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing

passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof.

1[***]

(6) On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to ¹ [the provisions of the scheme as sanctioned.]]

2 [(6A) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank may, by a further order in writing, direct that on such date as may be specified therein the banking company (hereinafter in this section referred to as the amalgamated banking company) which by reason of the amalgamation will cease to function, shall stand dissolved and any such direction shall take effect notwithstanding anything to the contrary contained in any other law.

(6B) Where the Reserve Bank directs a dissolution of the amalgamated banking company, it shall transmit a copy of the order directing such dissolution to the Registrar before whom the banking company has been registered and on receipt of such order the Registrar shall strike off the name of the company.

(6C) An order under sub-section (4) whether made before or after the commencement of section 19 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963) shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with, and a copy of the said order certified in writing by an officer of the Reserve Bank to be a true copy of such order and a copy of the scheme certified in the like manner to be a true copy thereof shall, in all

legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 19), be admitted as evidence to the same extent as the original order and the original scheme.]

³ [(7) Nothing in the foregoing provisions of this section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies ⁴[***] under section 396 of the Companies Act, 1956 (1 of 1956):

PROVIDED that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.]

⁵ [⁶[44B.] Restriction on compromise or arrangement between banking company and creditors.-

¹ [(1)] Notwithstanding anything contained in any law for the time being in force, no ² [High Court] shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them ³ [or sanction any modification in any such compromise or arrangement unless the compromise or arrangement or modification, as the case may be,] is certified by the Reserve Bank ⁴ [in writing as not being incapable of being worked and as not being detrimental to the interests of the depositors of such banking company.]

⁵ [(2) Where an application under ⁶[section 39 of the Companies Act, 1956 (1 of 1956)], is made in respect of a banking company, the High Court may direct the Reserve Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its Directors and when such direction is given, the Reserve Bank shall make such inquiry and submit its report to the High Court.]

7 [45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution of amalgamation.-

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or ⁸ [any agreement or other instrument], for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of ⁹[a banking company].

The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(2) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

¹[(4) During the period of moratorium, if the Reserve Bank

is satisfied that- (a)in the public interest; or

(b) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a

whole, it is necessary so to do, the Reserve Bank may prepare a scheme-

- (i) for the reconstruction of the banking company, or
- (ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:-

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

any change in the Board of Directors, or the appointment of a new Board of Directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority of whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any Director the period for which such appointment shall be made;

(c) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or

amalgamation;

(d) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;

(e) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company;

(f) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;

(g) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation whether their interest in such shares has been reduced under clause (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim-

- (i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or
 - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
- (h) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case maybe, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting, or as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

PROVIDED that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service ¹ [as are, at the time of such payment or grant, applicable] to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service ² [as are, at the time of such payment or grant, applicable] to the other

employees corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

PROVIDED FURTHER that if in any case under clause (ii) of the first proviso any doubt or difference as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank ¹ [the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause,] to the Reserve Bank whose decision thereon shall be final;

(i) notwithstanding anything contained in clause (i) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme under clause(i) or where any employees of the banking company have by notice in writing given to the banking company, or, as the case may be, the transferee bank at any time before the expiry of the one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the banking company immediately before the date of the order of moratorium;

(j) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(k) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6)(a) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose.

(b) The Reserve Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

PROVIDED that different dates may be specified for different provisions of the scheme.

¹ [(7A) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963) shall be conclusive evidence that all that requirements of this section relating to reconstruction, or, as the

case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21), be admitted as evidence to the same extent as the original scheme.]

(8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company, or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank ² [including the trustees or other persons Managing, or connected in any other manner with, any provident fund or other fund maintained by any of those companies or the transferee bank].

³ [(9) On and from the date of the coming into operation or, or as the case maybe, the date specified in this behalf in, the scheme], the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of the transferee bank.

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme or of any order made under sub-section (10) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme:

PROVIDED that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or ¹ [a subsidiary bank or a corresponding new bank].

¹ [Explanation.-References in this section of the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.]

❖ SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS

45A. Part III A to override other laws

The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the ³ [Companies Act, 1956 (1 of 1956)] or the Code of Civil Procedure, 1908 (5 of 1908), or the ⁴ [Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force or any Instrument having effect by virtue of any such law; but the provisions of any such law or Instrument insofar as the same are not varied by, or inconsistent with, the provisions of this Part or rules made there under shall apply to all proceedings under this Part.

45B. Power of High Court to decide all claims in respect of banking companies

The High Court shall, save as otherwise expressly PROVIDED in section 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under ⁵ [section 391 of the Companies Act, 1956 (1 of 1956)] by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the

commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953).

45C. Transfer of pending proceedings

(1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other court immediately before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner here in after provided.

(2) The official liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.

(4) If any proceedings pending in a court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

45D. Settlement of list of debtors

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the

manner hereinafter PROVIDED a list of debtors of a banking company which is being wound up.

(2) Subject to any rules that may be made under section 52, the official liquidator shall, within six months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule:

PROVIDED that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

(3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make an order settling the list of debtors:

PROVIDED that nothing in this section shall debar the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.

(4) At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

(5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been

granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by installments.

(9) In any case in which any such list is settled ex parte as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit:

PROVIDED that the High Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall—

(a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or

(b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the

time being in force.

45E. Special provisions to make calls on contributories

Notwithstanding that the list of the contributories has not been settled under

¹ [section 467 of the Companies Act, 1956 (1 of 1956)], the High Court may, if it appears to it necessary or expedient so to do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of ² [section 470 of the Companies Act, 1956 (1 of 1956)], if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

45F. Documents of banking company to be evidence

(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all ³ [legal proceedings]; and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.

Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (1 of 1872), all such entries in the books of account or other documents of a banking company shall, as against the Directors, ⁴ [officers and other employees] of the banking company in respect of which the winding up order has been made ¹[***], by prima facie evidence of the truth of all matters purporting to be therein recorded.

45G. Public examination of Directors and auditors

(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in

his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the banking company or of any Director or auditor of the banking company.

(2) If, on consideration of the report submitted under subsection(1), the High Court is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a Director or an auditor of the banking company should be publicly examined, it should hold a public sitting on a date to be appointed for that purpose and direct that such person, Director or auditor shall attend there at and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, Insofar as they relate to the affairs of the banking company:

PROVIDED that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

(3) The official liquidator shall take part in the examination and for that purpose may, if specially authorized by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High

Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

PROVIDED that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him, the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the Inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court, is of opinion (whether a fraud has been committed or not)—

(a) that a person, who has been a Director of the banking company, is not fit to be a Director of a company, or

(b) that a person, who has been an auditor of the banking company or a partner of a firm acting as such auditor, is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor, the High Court may make an order that person shall not, without the leave of the High Court, be a Director of, or in any way, whether directly or indirectly, be concerned or take part in the management of an company or, as the case may be, act as an auditor of, or be a partner of firm acting as auditors of any company for such period not exceeding five years as may be specified in the order.

45H. Special provisions for assessing damages against delinquent Directors, etc

(1) Where an application is made to the High Court under 1 [section 543 of the Companies Act, 1956(1 of 1956)], against any promoter, Director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a prima facie case against such

person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

PROVIDED that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

Where an application is made, to the High Court under ²[section 543 of the Companies Act, 1956 (I of 1956)], and the High Court has reason to believe that a property belongs to any promoter, Director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or any other person at an ostensible owner, then the High Court may, at any time, whether before or after making an order under subsection (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

45I. Duty of Directors and officers of banking company to assist in the realisation or property

Every Director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company.

45J. Special provisions for punishing offences in relation to banking companies being wound up

(1) The High Court may, if it thinks fit, take cognizance of and try in a summary way and offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up, or by any

Director, manager or officer thereof:

PROVIDED that the offence is one punished under this Act or under the

¹[Companies Act, 1956(1 of 1956)].

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the ² [Code of Criminal Procedure, 1973 (2 of 1974)], be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High Court-

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;

(b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice;

(c) shall, before passing any sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 263 of the ¹ [Code of Criminal Procedure, 1973 (2 of 1974)], so far as that section may be applicable, and nothing contained in sub-section (2) of section 262 of the²[Code of Criminal Procedure, 1973 (2 of 1974)], shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the ³ [Companies Act, 1956(1 of 1956)], and which are not tried in a summary way under ' sub-section (1) shall, notwithstanding anything to the contrary in that Act or the ⁴ [Code of Criminal Procedure, 1973 (2 of 1974)], or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding up of the

banking company.

(5) Notwithstanding anything to the contrary contained in the 5 [Code of Criminal Procedure, 1973 (2 of 1974)], the High Court may take cognizance of any offence under this section, without the accused being committed to it for trial⁶[***].

45K. Power of High court to enforce schemes of arrangements, etc

[Rep. by the Banking Companies (Amendment) Act, 1959, (w.e.f. 1-10-1959).]

45L. Public examination of Directors and auditors, etc., in respect of a banking company under schemes of arrangement

(1) Where an application for sanction a compromise or arrangement in respect of a banking company is made under ⁷[section 391 of the Companies Act, 1956 (1 of 1956)], or where such sanction has been given and the High Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any person who has taken part in the promotion or formation of the banking company or has been a Director or auditor of the banking company should be publicly examined, it may direct such examination of such person and the provisions of section 45G shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up. Where a compromise or arrangement is sanctioned under ¹ [section 391 of the Companies Act, 1956 (1 of 1956)], in respect of a banking company, the provisions of ² [section 543 of the said Act] and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

³ [(3) Where ⁴ [a scheme of reconstruction or amalgamation of a banking company] has been sanctioned by the Central Government under section 45 and the Central Government is of opinion that any person who has taken part in the promotion or

formation of the banking company or has been a Director or auditor of the banking company should be publicly examined, that Government may apply to the High Court for the examination of such person and if on such examination the High Court finds (whether a fraud has been committed or not) that that person is not fit to be a Director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditors, the Central Government shall make an order that that person shall not, without the leave of the Central Government, be a Director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

(4) Where ⁵ [a scheme of reconstruction or amalgamation of a banking company] has been sanctioned by the Central Government under section 45, the provisions of section 543 of the Companies Act, 1956 (1 of 1956), and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for the winding up of the banking company; and any reference in the said section 543 to the application of the official liquidator shall be construed as a reference to the application of the Central Government.]

45M. Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act

Where any compromise or arrangement sanctioned in respect of a banking company under ⁶[section 391 of the Companies Act, 1956 (1 of 1956)] is being worked at the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953) the High Court may, if it so thinks fit, on the application of such banking company,-

(a) excuse any delay in carrying out any of the provisions of the

compromise or arrangement; or

(b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 45D and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

45N. Appeals

(1) An Appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees.

(2) The High Court may by rules provide for an appeal against any order made under section 45J and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

45O. Special period of limitation

(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908)¹ or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908) or ² [section 543 of the

Companies Act, 1956(1 of 1956)] or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any Director of a banking company which is being wound up or for the enforcement by the banking company against any of its Directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its Directors, the period of limitation shall be twelve years from the date of the accrual of such claims ¹ [or five years from the date of the first appointment of the liquidator, whichever is longer].

(2) The provisions of this section, Insofar as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953).

45P. Reserve Bank to tender advice in winding up proceeding

Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

45Q. Power to Inspect

(1) The Reserve Bank shall, on being directed so to do by the Central Government or by the High Court, cause an Inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.

(2) On such Inspection, the Reserve Bank shall submit its report to the Central Government and the High Court.

(3) If the Central Government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.

On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Central Government under sub-section(3),the High Court may, if it deems fit, after giving notice to and hearing the Central Government in regard to the report, give such directions as it may consider necessary.

45R. Power to call for returns and information

The Reserve Bank may, at any time by a notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

Explanation.—For the purposes of this section and section 45Q, a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, deemed to be banking company which is being wound up.

45S. Chief Presidency Magistrate and District Magistrate to assist official liquidator in taking charge of property of banking company being wound up

(1) For the purpose of enabling the official liquidator or the special officer appointed under sub-section (3) of section 37 to take into his custody or under his control, all property, effects and

actionable claims to which a banking company ¹ [***] is or appears to be entitled, the official liquidator or the special officer, as the case maybe, may request in writing the ² [Chief Metropolitan Magistrate or the Chief Judicial Magistrate], within whose jurisdiction any property, books of accounts or other documents of such banking company may be situate or be found, to take possession thereof, and the ³ [Chief Metropolitan Magistrate or the Chief Judicial Magistrate], as the case may be, shall, on such request being made to him,-

⁴ [(a)take possession of such property, books of accounts or other documents, and

(c) forward them to the official liquidator or the special officer.]

[(2) Where any such property and effects are in the possession of the ² [Chief Metropolitan Magistrate or the Chief Judicial Magistrate], as the case may be, such Magistrate shall, on request in writing being made to him by the official liquidator or the special officer referred to in sub-section (1), sell such property and effects and forward the net proceeds of the sole to the official liquidator or the specialofficer:

PROVIDED that such sale shall, as far as practicable, be effected by public auction.

(3) For the purpose of securing compliance with the provisions of sub-section (1), the ³ [Chief Metropolitan Magistrate or the Chief Judicial Magistrate] may take or cause to be taken such steps and use of cause to be used such fore as may, in his opinion, be necessary.

(4) No act of the ⁴ [Chief Metropolitan Magistrate or the Chief Judicial Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.]

45T. Enforcement of orders and decisions of High Court

(1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908(5 of 1908), a liquidator may apply for the execution of a decree by a court, other than the one which made it on production of a certificate granted under subsection (6) of section 45D and on his certifying to such other court in writing the amount remaining due or relief remaining unenforced under the decree.

Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court, may, with the leave of the High Court, be recovered ⁵[by the liquidator in the same manner as an arrear of land revenue and for the purpose of such recovery the liquidator may forward to the Collector within whose jurisdiction the property of the person against whom any order or decision of the High Court has been made is situate, a certificate under his signature specifying the amount so due and the person by whom it is payable].

¹ [(4) On receipt of a certificate under sub-section (3), the Collector shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

PROVIDED that without prejudice to any other powers of the Collector, he shall, for the purposes of recovering the said amount, have all the powers which, under the Code of Civil Procedure, 1908(5 of 1908), a civil court has for the purpose of the recovery of an amount due under a decree.]

45U. Power of High Court to make rules

The High Court may make rules consistent with this Act and the rules made under section 52 prescribing—

- (a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held;
- (b) the offences which may be tried summarily;
- (c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard;
- (d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

45V. References to Directors, etc., shall be construed as including references to past Directors, etc

For the removal of doubts it is hereby declared that any reference in this Part to a Director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present Director, manager, liquidator, officer or auditor of the banking company.

45W. Part II not to apply to banking companies being wound up

Nothing contained in Part II shall apply to a banking company which is being wound up.

45X. Validation of certain proceedings

Notwithstanding anything contained in section 45B or any other provision of this Part or in section 11 of the Banking Companies (Amendment) Act, 1950 (20 of 1950), no proceeding held, judgment delivered or decree or order made before the

commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), by any court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a court other than the High Court.]

❖ **SOCIAL BANKING IN INDIA**

❖ **CONCEPT OF SOCIAL BANKING**

The traditional self-centered, profit-oriented commercial banking concept is fading and a modern socio-economic role is emerging as a result of a revolution of expectations of the society on the role and responsibilities of business community as a whole. A commercial bank can no more be considered a strictly economic institution trading in money. The 'social control' over banks imposed for the first time in 1967 has evolved into the philosophy of 'social banking'. A bank is now expected to meet the growing needs of not merely the rich and urban class of people, the organized industrial and commercial ventures and people who have sound security to offer, but also to cater to the various types of needs of 'masses', most of whom live below the poverty line. It is also expected to sponsor innovative non-banking social welfare schemes to improve the quality of life of the society as a whole.

In short, there is a shift from traditional concept of class banking' to the

modern concept of mass banking. Banks have to act as a catalyst of economic growth with social justice' banks is expected to make a direct rather than an indirect attack of the problem of poverty and to eradicate the various social ills afflicting the society.

The development of the concept of 'social banking' is a natural corollary of the development of the concept of 'social responsibilities' of other types of businesses. The societal demands on business houses to assume a social role justifies a similar demand on the banking industry also.

Business does not operate in a vacuum. It encompasses small sections of the society. It is not distinct and separate from it 'rather it is part of it'. It is as much a part of the society as a human being is and in today's interactive system, 'business cannot escape from society and society cannot exist without business'¹. The changing public needs and expectations affect a business a good deal. Many decisions taken by a business have quite often effective impact — whether beneficial or deleterious — even on the unconnected members of the society.

In view of this close interaction between business and society, the former cannot function viewing the fulfillment of its predetermined objectives as its sole mission. It owes certain obligations to the different segments of the society. Social responsibilities of business generally denote the answerableness of business to the society for performance of "certain functions or abstinence from indulging in certain activities.

The concept of social responsibility is sometimes equated with ethical norms governing business and society. It implies that a business cannot pursue its profit policy unmindful of the society's interest. 'A business concern can and should have a conscience. The language of ethics does have a place in the vocabulary of an organisation'².

Some experts hold the view that payment of fair wage, bonus, provision of various fringe benefits to employees, price discrimination to consumers, by charging low rate to some of them on account of their low purchasing power, taking concern over the buyers of product and services in the form of 'let the buyer beware' approach to 'customer educative' approach are all social obligation of business.

However, these are all part of the fulfillment of social obligation, It becomes a mandatory one to the business concern by the establishment of various legislations like payment of wages act, minimum wages act, consumer protection act etc. Hence it becomes a legal obligation and a business cannot ignore this obligation statutorily. In other words, an act to be characterized as a socially responsible act must not be one which a business concern is already under a legal obligation to perform. However, where more benefit is paid than the bare legal requirements, it will continue to constitute social obligation.

Some other authors view social obligation as not arising out of any ethical

considerations which are discretionary in nature. They feel that a duty is cast on a business to look beyond its nose and welfare of a society in which it breathes must find a place in its organizational framework. Even though shareholders are the owners of business and they have contributed the necessary capital, the business organisation ceases to be a private affair for making profit. 'Industry in the twentieth century can no longer be regarded as a private arrangement for enriching the shareholders. It has become a joint enterprise in which workers, management consumers, Government and the society also play a part'.

It is also recognized that a business corporation cannot afford to ignore enough - should over the society's interest any longer. To improve its corporate image it should consider society's interest as legitimate as its own. Business can win public trust only if it recognizes that other social interests are as legitimate and proper as its own and it takes account of the broader public interest in reaching its own decisions⁴.

Yet another view emphasizes the need for identifying the societal reactions so that it can harmonize its own goals with the needs of the society. The corporation is not and cannot be a purely economic institution. It must change as society changes. In the final analysis, the corporation must always act from signals that society sends to indicate its needs and expectations.

It must be understood that the need for recognizing society's interest is

oes
not spring from any attitude of benevolence or from ethical consideration. It arises
es
out of the impact its decisions cast on the society. The obligation that a business
s owes to society is, therefore not discretionary depending upon its
profit performance but an imperative necessity. Business organizations
take actions that intentionally or unintentionally, affect the institutions.
The concept of social
responsibility arises out of recognition of such unintended, wider ranging effects⁵.

Banking being a subsystem of the business system and an integrated part of
the overall social system, could not escape from being influenced by the
'revolution of expectations' and the resultant 'revolution of changes' in its supra
a
system which ultimately led to the currently popular concept of corporate social
responsibilities.

DEVELOPMENT OF SOCIAL BANKING CONCEPT

The thoughts on the role and responsibilities of banks vis-a-
vis the society are presented here in a historical perspective leading to
ae current state of
thinking about an 'ideal bank'. The concept of banking behavior is modeled here
re
on the basis of three theories of corporate behaviour namely (1) the traditional
or classical theory (2) the modern or managerial theory and (3) the
social responsiveness or social environment theory.

The Classical Theory

The classical model relates to the period before industrial revolution. Then, the sole responsibilities of a business were to assume its economic task efficiently. It was not appropriate in fact it was considered irresponsible for the business to take on social task that belong to taken in social task that belong to other units of the society.

The banking system under the model was not organized as it is today. The bank was subject to little state regulations. Banking was nothing but usury trading in money. The bankers were self-centered, profit maximising economic citizens. They could operate in magnificent isolation of the rest of the society, exploiting the external environment as if it were there for the taking. The whole social groups belonged to them; they did not belong to them, the responsibility of a bank was 'to make as much money as possible, while confirming the basic rules of the society; both those embodied in law and those embodied in ethical custom. Thus, in the classical view, the role of a banker as it was that of any other businessman was strictly economic in nature, subject to certain ethical compliance.

The Modern Theory

The thoughts of new-classical economists like Neil Chamberlain, John Meynard Keynes and John Robinson and of management theorists like Peter F Drucker, Keith Davis and George F Steiner have contributed to the transformation of the classical view to modern view. This social obligation concept implies that the business does not belong to owners only, who are to be treated as a special kind of creditors. The business owes its existence and growth to the goodwill of the various social groups namely labourers, creditors, consumers, community and society at large. Therefore, it should act as the 'trustee of the society'.

Banks being the main fulcrum in the wheel of infrastructure have a greater responsibility to assume extra economic role. They are expected to act as 'change agents' and 'catalyst' of progress. All their direct clients should be treated fairly. Their lending policies have to be tuned to the priorities set by the government. In short, the banking principles and practices should undergo a sea change, never imagined before, structurally, physically, qualitatively and conceptually. The social control over banks introduced in 1967 and the bank nationalization in 1969 were the important steps in the direction of making the banking sector realize

their social obligations.

In a sense, under this concept, the role and responsibilities of banks are well defined and regulated by legislations and administrative controls in order to ensure social accountability of banks. Banks in this way are not mere economic institution but are socio-economic citizens governed by patriotism, ethical values and economic expediency.

Social Environmental Theory

Neil Jacoby and Prakash S. Sethi have advocated the social environment for social responsiveness model of corporate behaviour.

The modern theory advocates 'social obligations' which implies a 'reactive', role upon pressure from various social groups. Jacoby and Sethi feel that in the present business environment the role of business should further extend to assume a 'proactive' role. This implies that business should assume extra-economic, extra-legal, 'societal' role voluntarily. Business should perceive what should be its long-run role in a dynamic social system. Business behaviour should be guided by the philosophy "what is good for the society is good for the corporation", 'quality of life' of the people in the society becomes the main concern of the corporate policies.

Banks being pivotal institutions in an economy can not and should not restrict themselves to their 'business' only. Traditional

principles of lending should not be scrupulously followed. A societal approach both with respect to deposit mobilization and advancing of loans should be adopted. The weaker sections, the priority sector industries and all those who cannot on their own come into banking fold should be assisted in all possible ways. This approach means shedding 'selling' orientation to adopt marketing philosophy. The bank's social involvement can have no limits except the humanitarian propensities of their management.

The dimension of bank behaviour described above is not to be considered as strictly watertight and mutually exclusive models. The role and responsibilities of a bank may encompass the economic, legal, ethical principles and the changing 'societal expectations' as well.

'Social responsibility is the obligation of decision makers to take actions which protect and improve the welfare of a society as a whole along with their own interest. It builds better quality of life, thus harmonizing organizational actions with society's wants'. To put the social responsibility philosophy into action every one in business must try to make decisions that will be for the common good of all societal members.

Kumara Raj. A's in his study on 'Social Obligation' of Banks states that social obligation of business refers to the overriding concern that a business should have for the pluralist society in its pursuit of activities for profit, involving some sacrifice of profit with intent to benefit the society, this implies

- i. Profit earning, though fundamental to the functioning of a business, does not in itself constitute social obligation.
- ii. Concern for others is an essential ingredient of social obligation.
- iii. There should be some sacrifice of profit, the profit lost benefiting some societal group other than the owners of the business. This sacrifice of profit may take in the form of:
 - a. Taking up non traditional ventures exposed to grave risks with intent to benefit the society
 - b. Meeting well above the minimum requirements of law, with the view to conferring greater benefit on various social groups.
 - c. Effecting price cuts, improving the quality of its products performance, without being under a legal obligation to do so.

Loss of certain profit is inevitable in the process of discharging social obligation. That a business has no moral right to jeopardize the interest of the society is borne out of the simple logic that one man's gain must not be another man's loss. Hence, the concern that a business should have for the society is a real social obligation. The concern can be in the form of:

- i. Helping the economically weaker sections of the society or the neglected but vital sectors of the economy.
- ii. Sacrifice of profit benefiting the society or the nation.
- iii. Risk is undertaken by venturing into non traditional lines of business.
- iv. Risk prone venture takes upon is intended to solve any social or national problem.

- v. Activities in true with national priorities so that it contributes to the strengthening of the national economy.

DEVELOPMENT OF SOCIAL BANKING IN INDIA

Ever since India embarked on its quest of economic development, it has sought social betterment of the less privileged. Social content of growth has been gaining momentum and the deprived have awakened to their rights and claims.

The adoption of socialistic ideology by the country has given rise to change in the public attitude towards banks and in the expectations of the public regarding services which the bank could render to the community at large.

With the growing social awareness of the role of bank credit in the economy, it was felt that the prevailing commercial banks lending had little social content and it facilitated concentration of economic power. In 1967, it was observed that the credit requirements of organized sectors of the economy and large scale borrowers were generally met by commercial banks and co-operative institutions, but institutional credit facilities were virtually non-existent so far as the small borrowers and the weaker sections of the community were concerned. This was responsible for poverty of small borrowers and encouragement of money-lenders.

The banking commission report in 1972 has also indicated that the banking system was highly urbanized. Banking activities were concentrated

in major cities.

In big cities it was mainly the well placed traders, businessmen and industrialists who availed themselves most of the credit facilities. Ownership and control of these banks was in few hands that were expanding the operations for their own

benefit, most of the funds were invested in the business in which directors of the banks themselves had more interest. The industrialists used these banks for achieving the commercial goal, maximization of profit.

The commercial banking was highly elitist catering primarily to large and medium scale industry and wholesale trade. The agricultural sector which used to contribute 50 per cent of national income was virtually bypassed.

The Gadgil study group observed that there was a flow of resources from the smaller to larger population centers and rural to urban centers. The credit deposit ratio was poor in relatively backward rural areas because lending opportunities were better in developed areas. Bulk of the lending of commercial banks was directed to big industries because it was easy to lend with safety and low administrative costs. This resulted flow of funds from rural to urban areas.

Loans and advances were highly security oriented and comparative neglect of social purposes of venture financed. In simple words, banks were not properly equipped to assist the attainment of the basic socio — economic objectives of economic growth with social justice.

Establishment of State Bank of India

The historical perversities in banking development needed a remedy. It was felt that banks operations should be in alignment with the national policy and objectives. It necessitated the government to think in providing adequate banking facilities under the umbrella of state ownership, control and management.

The All India Rural Credit Survey Committee, strongly recommended creation of one powerful, integrated, state sponsored, state-partnered commercial banking institution with an effective machinery of branches spread over the whole country.

On the recommendation of the rural credit survey committee Imperial Bank of India was nationalized and renamed State Bank of India in 1955. It was the first milestone in the history of social banking in India. Its main mission was to extend banking facilities on large scale, more particularly in rural and semi-urban areas where other commercial banks were shy to enter. The bank was asked to open 400 branches within a period of five years of its inception, mainly in rural and semi-urban areas. It fulfilled its target of opening 400 branches a little ahead of the scheduled span of five years and played a leading role in the promotion and

financing of agriculture and small industries with the assistance of co-operative banks.

Participation of other Commercial Banks

Till 1960's supply of credit to agriculture was met by co-operatives. But it was not in a position to cater the increasing needs of agriculturists on account of intensive agricultural development programmes introduced. Therefore, a multi agency approach was necessitated to tackle the potential demand for rural credit. Various committees like Agricultural Finance Sub-Committee, Rural Banking Enquiry Committee and all India Rural Credit Survey Committee (1954) had emphasized that credit provided by commercial banks in India to agriculture was negligible, but none had made any recommendation that commercial banks should enter the agricultural and rural sector in a large scale.

It was at this stage, the entry of commercial banks with enormous resources at their command and growing network of their offices in different parts of the country, into the field of agricultural financing was considered not only desirable but necessary.

Social Control over Commercial Banks

Pointing that private sector banks credit was being used to the objects

which are contrary to the national priorities, the report of the All India Congress Committee's four economists stated that private control of banks in a planned economy was an anachronism which had been an obstacle to the achievement of plan objectives.

But at the same time there was some argument against nationalization of commercial banks. So that the Government ultimately decided to introduce _____ in December 1967, a scheme of "social control over banks, which was later given a legal framework under the banking laws amendment Act 1968.

The main purpose of social control was to make the commercial banks

active participation in the national endeavour directed towards the social well being of the masses. The social control legislation envisaged

- i. The establishment of the national credit council to formulate new credit policy
- ii. Appointment of non— industrialist bankers having special knowledge of the working of banking company as chairman of all banks as whole time employee for a term not exceeding five years.
- iii. Appointment of not less than 51% of professional directors.
- iv. Prohibition to grant loans or advances or guarantee to directors or a firm in which he is interested and
- v. Establishment of a training institute at the highest level to improve the technical expertise of bank executives.

The purpose of social control was to achieve the social ends without tact

ual take over of banks by the government.

National Credit Council

To regulate and implement the scheme of social control, a high level body at the all India level, called national credit council was set in 1968. The main functions of the council were (i) to assess the demand for banks credit from various sectors (ii) to determine priorities for grant of loan and advances in the light of the availability of resources (iii) To ensure increased credit flow to the hitherto neglected sectors such as agriculture and small industries.

National credit council constituted five study groups. The result of the study group is not satisfactory to the achievement of societal goals. It was felt that even the scheme of social control over banks could not provide speedier justice to the included sectors of the economy. Hence, the Government had to resort to the extreme step of taking over 14 major commercial banks with all their offices.

Nationalization of Major Commercial Banks

In order to bring about rapid transformation in the banking system and to serve better the needs of development of the economy in conformity with a

tional policy and objectives, that the ordinance of nationalization of 14 major commercial banks in India was promulgated in 1969.

At the time of bank nationalization, the then prime minister pointed out 'an institution such as banking, which towards the lives of millions, has necessarily to be inspired by a large social purpose and has to sub serve national priorities and objectives'. That is why there has been wide spread demand that major bank should not only be socially controlled but policy owned.

The main objective of bank nationalization was (i) expanding bank credit to priority sector (ii) removal of control by a few (iii) giving professionalism to bank management (iv) encouragement of new class of entrepreneurs (v) provision of adequate training and reasonable terms of service for bank employees.

The nationalization of the 14 banks were undertaken to accelerate the achievement of the objective of social control. The emphasis was shifted from industrial and commercial sector to agriculture and small industries as well as from urban to rural areas with a view to achieving the social objectives of economic development. The banks were called upon to play a developmental role and assist the government in the effective implantation of socio-economic programmes aimed at mitigating the economic suffering of the down-trodden with country. Thus attainment of "social banking" was the

very purpose of bank nationalizations.

The social banking activities of commercial banks can be classified into two broad groups namely (i) social banking operations formulated as well as implemented by the concerned commercial banks and (ii) rural development and poverty alleviation programmes designed and sponsored by the government and financed by commercial banks.

Social Banking Formulated by Commercial Banks

The activities designed to promote the enlistment of rural poor have been in the form of (i) non-lending social activities and (ii) social lending activities. The non-lending activities of commercial banks can be of mobilization of rural deposits, rural branch expansion, provision of non-banking activities to development of rural poor etc. The lending operation can be either formulated by commercial banks or structured by government and financed by commercial banks.

Branch Expansion in Rural Areas

The present network of commercial banks is the result of a deliberate policy of branch expansion pursued by public sector banks during the post-nationalization period. During the period from July 1969 to July 1979, 21,881 new branch offices

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were opened. The average population per bank office decreased from 65000 as on

the date of nationalization to 1800 as at the end of 1st June 1982. Thus, it is obvious that many unbanked areas were benefited by the branch expansion policy followed in the country after nationalization of banks.

Deposit Mobilization

The postnationalization period has shown a substantial rise in the rate of deposit mobilization. The aggregate deposit in banks increased because of several factors like (i) there was a growth of banking habit among the people (ii) strong financial position of banks inspired public confidence in them; (iii) launching of deposit insurance scheme gave safety to depositors; (iv) expansion of the branches and (v) income of the people has been rising. The total bank deposit recorded a more than threefold increase during seven year periods since nationalization.

Advances to Agriculture

The nationalized commercial banks provide financial assistance to agriculture in two ways namely, direct assistance and undirected assistance. The indirect assistance is offered for financing marketing of agricultural produce, distribution of fertilizers financing food grains procurement

by the food corporation of India, providing finance to land development bank co-operative marketing and procuring societies, co-operatives sugar factories, providing funds to primary agricultural credit societies and farmers services societies to enable them to lend to their members etc. The direct assistance to agriculturists was given to their short term needs like irrigation, purchase of fertilizers and pesticides, seeding and often related expenses. Banks were initially given a target of extending 15 per cent of the total advances as direct finance to agriculture, then it was raised to 18 per cent to be achieved by March 1990 by taking together direct and indirect advances with the condition that indirect finance does not exceed one-fourth of the total agricultural advances.

Credit Deposit Ratio in Rural Areas

One of the objectives of bank nationalizations has been to see that bank credit is deployed in rural and semi-urban areas in an appropriate manner. In order to achieve the objective in 1977, the RBI laid down a policy to the public sector banks that the rural and semi-urban branches of banks should secure credit deposit ratio of at least 60 percent by the end of March 1979. It is to restrict the flow of funds from rural to urban areas. It is an important credit planning measure for bringing about upliftment of the weaker sections of the rural community.

Priority Sector Lending

The concept of priority sector lending is mainly intended to ensure that assistance from the banking system flows in an increasing measure to those sectors of the economy which though accounting for a significant proportion of the national product have not received adequate support of institutional finance in the past. The flow of institutional finance to the priority sector started after nationalization of banks. Banks have drawn up schemes to extend credit to small borrowers in sectors such as agriculture, small scale industry, road transport, retail trade and small business which traditionally had very little share in the credit extended by banks.

Taking into account the need to provide bank credit to weaker sections for specific needs, consumption credit for certain limits has been included in priority sectors. Housing loans (upto 5 lakhs per unit). Education loan for higher studies are also classified as priority sector advances. The amount of outstanding advances by the commercial banks increased from Rs. 4.41 crores in June 1969 to Rs. 1,07,200 crores in March 1999. In terms of percentage, advances to priority sectors increased from little over 14 percent in June 1969 to more than 40 percent in March 1999.

Credit to Weaker Sections

With the view to augment credit flow to small and poor farmers and weaker sections of the society, commercial banks were advised by RBI to provide at least 10 percent of their net bank credit or 25 percent of their priority sector advances to weaker sections comprising small and marginal farmers, landless labourers, tenant farmers, artisans, village and cottage industries and to beneficiaries of various government rural development programmes. The public sector banks have achieved maximum share of target at the end of March 1999.

Lead Bank Scheme

The national credit council appointed a study group on organizational framework for the implementation of social objectives under the chairmanship of D.D. Gadgil. The study group recommended the adoption of area approach to banking development in the country. The study group suggested that the public sector banks should be given specific districts wherein they should be asked to bring about integrated development of banking facilities. On the basis of the recommendation of Gadgil study group, RBI preferred the lead bank scheme in 1969 allotting 338 districts in the country to public sector banks.

The lead bank which is allocated a specific district is supposed to play the

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role of consortium leader of all the banking and financial institutions functioning

in the district. The lead bank is to act as a leader in the specific district and it has to obtain the co-operation of all the other banks in the area. It has to coordinate

the banking and financial activities of all them and be in overall charge of the district so far as the financial requirements of the district concerned.

Village adoption scheme (VAS)

The village adoption scheme is an extension of intensive area approach

adopted by commercial banks. The main objective of the scheme is to develop the

village economy in all its aspects in a phased manner. The following are the usual steps suggested for village adoption scheme (i) selection of villages (ii) survey of selected villages to assess the potentials for development (iii) preparation of a phased action programme (iv) identification of eligible borrowers and (v) formulation of proposals for development of individual farms. While selecting villager for such scheme, the following points are to be considered

- i. Good potential for development
- ii.
- iii. Non insatiability to recurrent calamities due to draughts floods etc Easy accessibility and

- iv. Willingness of farmers to adopt progressive methods of cultivation

Differential Rate of Interest Scheme

The differential rate of interest (DRI) scheme was launched in 1972 on the recommendation of Dr. R.K. Hazari committee. Under DRI scheme, each public sector commercial bank is required to lend at least one per cent of its total advances to the economically backward people at a low rate of four per cent per annum. At least two —third of the loan under this scheme are given to the people belonging to scheduled castes and tribes. People with the annual income of Rs. 2000 per family in rural areas and Rs. 3000 per family in urban areas are eligible to get concessional loans under this scheme. The eligible borrowers can borrow a composite loan upto Rs. 6500 under the scheme.

Formation of Specialized Service Centers

After nationalization, banks have taken keen effort to develop rural areas. One of the methods is concentrating particular area by providing financial and other supporting services to that particular targeted people. Various commercial banks designed their offices to suit the requirements of specific type of rural customers.

- i. **Agricultural Development Branches**

Realizing the need for specialized setup for agricultural finance,

many commercial banks have setup specialized agricultural branches. The state bank of India commenced Agricultural Development Branches (ADB). It is a unique organizational innovation it was designed to give to the banks the backing of technical expertise and mobility with the help of field staff and vehicular support to agricultural development.

ii. Gram Vikas Kendra (GVK)

Bank of Baroda started Gram Vikas Kendra i.e. centres for the development of village to finance and rural activities and provide the mother services which area needed for development. It function in co-ordination with Panchayat Raj institution, government officials and business houses in order to create employment opportunities in rural areas, reduce rural poverty, increase irrigation facilities and farm output.

iii. Rural Service Centres (RSC)

Rural service centers have been opened by Dena bank to provide technical guidance to the branches undertaking rural financing. A team of qualified agricultural officers is posted to every Centres to give technical support to the rural bank branches. Its main purposes are to enable the rural branches under the command to draw and make use of the services of technical officials at the place, to keep rapport with government agencies at the block level, marketing agencies, suppliers of input etc.,

Thus, the specialized service centres were formulated by the banks to enable the rural people to have easy access to the bank and to avail technical support of the banks.

Regional Rural Banks

In June 1975, the then Prime Minister announced a new economic programme which, among many other things aimed at devising alternative agencies to provide institutional credit to lenders, labourers, rural artisans and small and marginal farmers, in the context of steps being instantiated also under the programme, to liquidate rural indebtedness of those classes of people.

A working group by the Government of India under the chairmanship of M. Narashimha examined the question in detail and recommended to set up new rural banks as subsidiary public sector banks to cater to the financial requirements of rural people. The working group recommended to set up Regional Rural Banks (RRB's) which should be state sponsored, regionally based and rural-oriented commercial bank combining the local feel and familiarity with rural problems. Keeping in view the main objective of RRBs are.

- i. Taking banking services to the doorstep of rural masses particularly in hitherto unbanked rural areas.

- ii. Making available institutional credit to the weaker sections of the society.
- iii. Mobilise rural savings and channelise them for supporting productive activities in the rural areas.
- iv. To credit a supplementary channel for the flow of credit from central money market to rural areas.
- v. Generating employment opportunities in rural areas and bringing down the cost of providing credit to rural areas.

The RRB is established by the central Government on the request of commercial banks which is called sponsor bank in a state or union territory. The central Government shall specify the local limits within which each RRB will operate. The share of capital of the RRB is subscribed by the Central Government, Sponsor Bank and respective State Government into ratio of 50:35:15 percent respectively. Thus after nationalization, RRBs, was established with the objective of strengthening rural credit structure and extent banking services to rural areas. From the above discussion, it is clear that social orientation of commercial banking activities expanded in various forms after nationalization of major commercial banks in India.

Implementation of Rural Development Programmes by Banks

After independence, to achieve socio-

economic objective of our nation, through various policies of our economic planning member of rural development programmes were initiated in our country. Some of them are wage employment programmes and specific area development programmes which are directly implemented by the central and state governments. Some others are meant for providing self employment opportunities to poor sections of the community through credit the assistance of commercial banks along with subsidies and concessions of the Central and State Government.

The following paragraphs give a brief note on various rural development programmes of the government, implemented by their own agencies.

Wage Employment Programmes

Jawahar Rozgar Yojana (JRY)

The Jawahar Rozgar Yojana (JRY) was started in April 1989 by merging the on going National Rural Employment Programme (NREP) and Rural landless employment Guarantee Programme (RLEG) into a single rural employment programme. The main objective of JRY is generation of additional gainful employment for the unemployed and under employed persons both men and women in rural areas. The secondary objective of the JRY is creation of durable community and social assets. It is designed to arrest the seasonality of wage employment. It also aimed at improvement in the quality of life of the rural population.

or

by providing supplementary source of income through wage employment.

Employment Assurance Scheme (EAS)

It was introduced with effect from 2nd October 1993 in the rural area of 1778 blocks of 261 districts. The blocks selected were in the drought prone areas, tribal areas and hill areas. During 1994-95 it was extended to 409 blocks. The main objective of the scheme is to provide gainful employment during lean agricultural season in manual work to all able bodied adults in rural areas.

Jawahar Gram Samridhi Yojana (JGSY)

The government restricted JRY and Employment Assurance Scheme (EAS) and launched a new programme Jawahar Gram Samridhi Yojana (JGSY) to develop rural infrastructure at the village level in a planned manner. This programme has come to effect from 1st April 1999. It is implemented through village panchayat and funds are provided by DRDA directly to village panchayats. 22.5 per cent of funds of the programme have been earmarked for individual beneficiary schemes of scheduled caste and tribes. The DRDA/ZP is responsible for overall guidance supervision, monitoring and periodical reporting of the programme.

Pradhan Mantri Gram Sadak Yojana (PMGSY)

The PMGSY was launched on December 25, 2000 as a fully centrally sponsored scheme with the primary objective of providing all weather connectively to the unconnected habitations in the rural areas. The program is funded mainly from the accruals of diesel cess in the Central Road Fund. In addition, support of the multilateral funding agencies and the domestic financial institutions is being obtained to meet the financial requirements of the programme.

Million Wells Schemes

It was launched as a sub-scheme of National Rural Employment Programme and Rural Landless Employment Guarantee Programme (RLEGP) during 1988-89. It continued as a sub-scheme of JRY from April 1989 to December 1995. From 1st January 1996 MWS is an independent scheme. The objective of the scheme is to provide open irrigation wells free of cost to poor, small and marginal farmers who are below the poverty line and freed bonded labourers. It is a centrally sponsored scheme and funds are shared between the central and state in 80:20 basis.

Sampoorna Grameen Rozgar Yojana (SGRY)

This programme was launched on 25th September 2001 by merging

theon-

going schemes of Rs.10,000 crore to provide additional wage employment in the rural areas. The objectives of the programme are to provide additional wage employment in the rural areas as also food security along side the creation of durable community, social and economic infrastructure in rural areas. Every

workers seeking employment under the scheme will be provided minimum 5 kilograms of food grains per man-day as part of wages.

National Rural Employment Guarantee Scheme (NREGS)

The national rural employment guarantee Act aims at enhancing the livelihood security of the people in rural areas by providing guaranteed wage employment through works that develop the livelihood resource base of that area so

that in that process of employment generation durable assets are built up. The Act

was executed in September 2005. It was notified in 200 districts of 27 states on

February 2006 and was extended to 130 additional districts 130 additional districts on 2007-

08, All remaining rural areas have been notified from April 1, 2008, adult

members of rural household who are willing to do unskilled manual work may apply for registration to the local gram Panchayat for getting the job under the scheme.

Training of Rural Youth for Self Employment (TRYSEM)

It is a centrally sponsored scheme, started on 15th August 1979. It aims at providing basic technical and entrepreneurial skill to the rural youth from families below the poverty line to enable them to take up self employment in the broad fields of agriculture and allied sectors, industries, services and business activities.

The rural youth in the age group of 18-35 years from families below poverty line are enlisted for training under the scheme. The duration of training course is six months. However, the state level co-ordination committee can change the duration for new trades. There is no educational qualification prescribed for selection of trainees. The trainees are paid a stipend varying from Rs.200 to Rs.500 per month during the training besides that there is a provision of Rs.800 as an allowance for purchase of tool kits by trainees.

Development of Women and Children in Rural Areas (DWCR)

The DWCR was launched as a sub-scheme of IRDP during the year 1982 - 83 in 50 districts. It subsequently expanded to cover all the districts in the country by 1994-95. The flow of credit and other benefits to poor women in spite of reservation under various programmes like IRDP, TRYSEM were found to be not making much impact. Therefore, in order to overcome this situation and involve

theruralwomenmoreintenselyineconomicactivities,aexchisiveprogrammefo
r women namely Development of women and children in Rural Areas
was introduced.

Supply of Improved Tools to Rural Artisans (SITRA)

This scheme was launched as a sub-
scheme of IRDP in July 1992, with the
objective of enabling the rural artisans to enhance the quality of their product
s,
increase their production and income and ensure better quality of life without
the use of migration to urban areas.

Artisans from a variety of crafts except weaving, tailoring and
beedi workers are to be supplied with suitable improved hand tools or set
of tools. The
average cost of a toolkit is Rs.2000, in case of a power driven tool the average
cost is Rs.4500/-. Ninety per cent of the cost of toolkit is a subsidy from
the
Government of India and 10 percent is to be contributed by the beneficiary.

Other Development Programmes

In addition to the above discussed wage employment programmes,
special development programmes like drought Prone Areas
Programme, (DPAP) Desert Development Programme (DDP), Rural
Housing Programmes like Indra Awaas
Yojana, National Mission for Rural Housing, and other social welfare programme
, such as National Old Age Pension Scheme, National Family Benefit

Scheme, National Maternity Benefit Scheme Provision of Urban Amenities in Rural Areas

PURA) etc., have also been implemented by the Government through various agencies for the development of rural poor households.

Self Employment Programmes

Besides the above described wage employment and area development programmes, there are some self employment and entrepreneurial development programmes have also been designed by the government and implemented through various government agencies in association with commercial banks of concerned areas for financing the projects. The important programmes centrally designed and processed by the state government authorities for the provision of credit and other supportive assistances by the commercial banks have been narrated in the following paragraphs.

Integrated Rural Development Programme (IRDP)

The strategy and policy of direct attack on poverty by way of target approach for rural poor come into being in fourth five year plans with the main objective of improving the assets base of the poor and to involve the poor income generation process of the economy. The IRDP was initiated initially in 1973

blocks and has been extended to all the blocks of the country since 2^d October 1980.

IRDP aims at providing income generating assets and self employment opportunities for the rural poor. Assistance under the scheme is given to target group of rural poor belonging to families below poverty line in the form of subsidy by the Government and term credit by financial institutions.

The target group consists of weaker sections of the society whose per capita monthly expenditure does not exceed the limit of poverty line. Within the target group special safeguards have been provided by the reservation of 50 percent benefit for SCs/STs; 40 per cent for women and 3 per cent physically handicapped persons, priority also given to women headed households.

It is implemented by District Rural Development Agency. The Government Body at the district level provides guidance and direction to DRDAS.

It includes local member of Parliament, member of Legislative Assembly and chairman of Zilla Parishad, Head of district Development Department and representative of SC/ST women, NGOs. At the grass roots level the programme is carried out by block development officer, with the help of village level functionaries.

The performance of IRDP is monitored at state level by a state level co-

ordination committee and it review the implementation of the scheme and lay down policy guidelines. At the central level a high level co-ordination committee on credit support to IRDP also monitor its operations.

Swarnajayanti Gram Swarozgar Yojana (SGSY)

The SGSY has been launched with effect from 1st April 1999 as a new self employment programme. With the introduction of SGSY programme, the earlier programme of IRDP, TRYSEM, DWCRA, SITRA, MWS are withdrawn from operation.

The objective of SGSY is to bring the assisted poor families above poverty line by providing them income-generating asset through a mix of bank credit and government subsidy. The programme aims at establishing a large number of micro enterprises in rural areas based on the ability of the poor and potential of each area.

❖ Salient Features

The salient features of the Swarnajayanti Gram Swarozgar Yojana are as follows:

Swarnajayanti Gram Swarozgar Yojana aims at establishing a large number of micro-enterprises in the rural areas, building upon the potential of the rural

poor. It is rooted in the belief that rural poor in India have competence and, given

the right support can be successful producers of valuable goods and services.

1. The assisted families (known as Swarozgaris) may be individuals or groups (self-help groups). Emphasis is, however, on the group approach.
2. The objective under SGSY is to bring every assisted family above the poverty line in three years.
3. Towards this end, Swarnjayanti Gram Swarozgar Yojana is conceived as a holistic programme of micro-enterprises covering all aspects of self-employment, viz., organization of the rural poor into self-help groups and their capacity building, planning of activity clusters, infrastructure build up, technology, credit and marketing.
4. In establishing the micro-enterprises, the emphasis under SGSY is on the cluster approach. For this, 4-5 key activities are to be identified in each block based on the resources, occupational skills of the people and availability of markets. The key activities are to be selected with the approval of the Panchayat Samitis at the block level and the District Rural Development Agency (DRDA) / Zila Parishad (ZP) at the District level. The major share of SGSY assistance will be in activity clusters.
5. SGSY adopts a project approach for each key activity. Project reports are to be prepared in respect of identified key activities for sanctioning of loans and to ensure adequacy of financing.

6. The existing infrastructure for the cluster of activities is reviewed and gaps identified. Critical gaps in investments are made under SGSY subject to a ceiling of 20 percent (25 percent in the case of north-eastern States) of the total programme allocation for each district. This amount is maintained by the DRDA as 'SGSY - Infrastructure Fund' and which can also be utilised to generate additional funding from other sources.
7. The effort under SGSY is to cover 30 per cent of the pmr in each block in next five years through an efficient programme.
8. SGSY also focuses on the group approach. This involves organization of the poor into self-help groups and their capacity building. Efforts are made to involve women members in each self-help group.
9. The Gram Sabha authenticates the list of families below the poverty line identified in the Below Poverty Line (BPL) census. Identification of individual families suitable for each key activity is made through a participatory process.
10. SGSY is a credit-cum-subsidy programme. However, credit is the critical component in SGSY, subsidy being only a minor and enabling element.
11. SGSY seeks to promote multiple credit rather than a one time credit injection. The credit requirements of the Swarangaris are carefully assessed. They are allowed and encouraged for increasing their credit intake over the years.
12. SGSY seeks to lay emphasis on skill development through well designed training courses. Those who have been sanctioned loans

- are assessed and given necessary training.
13. SGSY ensures upgradation of the technology in the identified activity clusters. The technology intervention seeks to add value to the local resources, including processing of the locally available for local and non- local market.
 14. SGSY provides for promotion of marketing of the goods produced by the SGSY Swarozgaris. this involves provision of market intelligence, development of markets, consultancy services, as well as institutional arrangements for marketing of the goods including exports.
 15. Subsidy under SGSY is uniform at 30 percent of the project cost, subject to a maximum of Rs. 7500. In respect of SCs/STs, however, these are 50 per cent and Rs.10,000 respectively. For groups of Swarozgaris the subsidy is at 50 per cent of the cost of the scheme, subject to a ceiling of Rs. 1.25 lakh.
 16. SGSY has a special focus on the vulnerable groups among the rural poor. Accordingly, the SCs/STs would account for at least 50 per cent of the Swarozgaris, women for 40 per cent and the disabled for 3 percent.
 17. SGSY is implemented by the DRDAs through the Panchayat Samitis. The process of planning, implementation and monitoring integrates the banks and other financial institutions, the PRIs, NGOs, as well as technical institutions in the district.
 18. Fifteen percent of the funds under SGSY are set apart at the national level

for projects of far-reaching significance and which can also act as indicators of possible alternative strategies to be taken up in conjunction with the other departments or semi-government and international organizations.

19. Funds under the SGSY are shared by the Central and State Government in the ratio of 75:25.
20. The Central allocation earmarked for the States is distributed in relation to the incidence of poverty in the States. However, additional parameters like absorption capacity and special requirements will also be taken into consideration during the course of the year.

SGSY has also a component for special projects for self-employment of the rural poor. Some project proposals submitted by the State Governments are under active consideration of the Ministry.

Prime Minister's Rozgar Yojana (PMRY)

Prime Minister's Rozgar Yojana (PMRY) was launched on 2nd October, 1993 throughout the country with a view to providing employment to 10 Lakhs educated unemployed youth by setting up 7 lakh microenterprises. The PMRY is an enlarged version of SEEUY, being implemented with higher investment limit

of project cost upto Rs.1 lakh per person, without insisting on collateral security for starting a self-employment venture in industry, service and business sectors.

There is a special provision in the scheme allowing two or more eligible persons to joint together in partnership promoting an enterprise. In such cases, the loan limit will also be correspondingly increased to Rs.2 lakh for two persons, Rs.3 lakh for 3 persons and so on. The beneficiary should contribute 5 percent of the project cost as margin money. This loan is provided by the bank for suitable persons and for viable activities only after the Task Force Committee at the district level identifies and selects prospective self-employment persons and recommends their cases for bankable projects.

Assistance from the Government of India is in the form of an outright subsidy of 15 percent of the project cost or Rs.7,500, whichever is less. For two or more persons promoting a venture, subsidy will be correspondingly increased at this rate. This amount is made into a fixed deposit and adjusted against the loan amount at the end of the repayment period. The beneficiaries for the scheme are counselled and screened by the Task Force at the Taluk/block/district level for recommending applications to banks for sanction of loans.

After sanction of loan by the banks, the beneficiaries have to

undergo training for four weeks in entrepreneurship and get equipped to organise and operate micro-enterprises.

APMRY beneficiary is one who is in the age group of 18-35 years at the time of submission of application for loan and who has passed or failed at least matriculation and has passed ITI, and has undergone the government sponsored technical course for a minimum duration of six months. The annual income of the family of such beneficiaries should not exceed Rs.24,000/- per annum. The family for this purpose would include the beneficiary and the spouse. The family income should include income from all sources, whether in the form of wages, salary, pension, agricultural income, business income, rent and or interest from any source. The candidates should not be a defaulter to any nationalised bank/financial institution / cooperative bank. The beneficiary should have been a permanent resident of the area (district) for at least three years.

This scheme is implemented through the office of the Development Commissioners small scale industries (SSI) at the central level, the Directorate of Industries at the State Level and the District Industries Centres at the field level. The banking division of RBI coordinates the banking support and the nationalised banks provide the necessary loans. As far as training is concerned, various training institutions like SISIs are providing support and state governments have made available training manuals, project profiles etc. Training of the PMRY

beneficiaries is the responsibility of the state governments and they have assigned SISIs, DICs and NGOs for this purpose.

Bio Gas Development

Bio gas is a clean non-polluting and low cost fuel. The ministry of non conventional energy sources has taken up a programme known as National Project on Biogas Development (NPBD) for the development and harnessing of biogas potential in the country. The project was started in 1981-82 with the following objectives:

- a. To provide fuel for cooking purposes
- b. To provide organic manure through biogas plants
- c. To mitigate the drudgery of rural women
- d. To improve sanitation in villages by linking toilets with biogas plants

State governments have designated nodal departments and nodal agencies for implementation of the project. Biogas development and training centres functioning in major states, provide technical and training back up to concerned state nodal departments. Commercial and co-operative banks provide loan for setting up of biogas plants. NPBD provides for different types of financial incentives including central subsidy to users

Self Employment Scheme for Ex-Servicemen (SEMPEX)

This scheme has been in operation since January 1988, it is

designed to provide a comprehensive package of credit for encouraging ex-servicemen, disabled service personnel, war widows and widows of ex-servicemen to undertake agricultural and allied activities or to set up non-farm units in rural areas to earn their livelihood for leading a dignified life.

Many army personnel sustain serious injuries and are rendered disabled for life. SEMFEX covers them in the form of financial assistance for economic activities. The coverage of women is significant in the context of the march of women folk in India from dependence to independence. SEMFEX recognizes the shift from welfare approach to empowerment approach in the development process of the country. The commercial banks, regional rural banks and co-operative banks are the agencies through which loans can be availed.

Tamilnadu Adi Dravidar Housing Development Corporation (TAHDCO)

TAHDCO has been established in order to improve the living conditions of scheduled castes/scheduled tribes by improving their income earning capacities through income generating programmes and improving human skills through training programmes. Its schemes have been decentralized and formulated at the district level for the economic development of SC and STs. The District Action

Plans (DAP) have categorized certain activities for the purpose of easy monitoring. That includes and purchase, agricultural activities, allied agricultural activities, mining and quarrying, manufacturing processing and servicing, construction, trade and commerce, transport and storage and other services .

TAHDCO acts as a State channelising agency in implementing the national schemes of the ministry of social justice and empowerment of our country. TAHDCO's financial assistance is made available through commercial banks to all the eligible persons, those are willing to start self employment ventures.

Thus in this chapter, the concept of social banking has been defined and narrated by the researcher, taking into account all the aspects associated with this concept. The development of "social banking in India has been described in two forms known as development before nationalization of major commercial banks and development after nationalization of banks.

This chapter also had a detailed description on the voluntary social lending services and the Government sponsored social lending schemes implemented by commercial banks to the benefit of rural community.

IMPORTANT QUESTIONS:-

1. Who is a Banker ? Explain Types & General Relationship of Banker with his customer.
2. Define Bank? Explain the functions, importance & Limitations of bank?
3. Write the detailed note on Suspension & winding up of Business of banking companies.
4. Write the note on Management of Banking Companies.
5. Explain the Social control over banking, Banking.
6. Write the short note on following:-
 - (a) Account & audit
 - (b) Reconstruction and reorganization of banking companies

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UNIT-II

NEGOTIABLE INSTRUMENT ACT, 1881

❖ INTRODUCTION

The Negotiable Instruments Act was enacted, in India, in 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act were applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act provides that no person in India other than the Bank or as expressly authorised by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand. This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable on demand or after a certain time. Section 32 of the Reserve Bank of India Act makes issue of such bills or notes punishable with fine which may extend to the amount of the instrument. The effect or the consequences of these provisions are:

1. A promissory note cannot be made payable to the bearer, no matter whether it is payable on demand or after a certain time.
2. A bill of exchange cannot be made payable to the bearer on demand though it can be made payable to the bearer after a certain time.
3. But a cheque {though a bill of exchange} payable to bearer on demand can be drawn on a person's account with a banker.

❖ MEANING OF NEGOTIABLE INSTRUMENTS

According to Section 13 (a) of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or "bearer" appear on the instrument or not."

In the words of Justice, Willis, "A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value not with standing any defects of the title in the person from whom he took it".

Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which is freely transferable.

Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability:

1. the instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and
2. the person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name.

As such, documents like share warrants payable to bearer, debentures payable to bearer and dividend warrants are negotiable instruments. But the money orders and postal orders, deposit receipts, share certificates, bill of lading, dock warrant, etc. are not negotiable instruments. Although they are transferable by delivery and endorsements, yet they are not able to give better title to the bonafide transferee for value than what the transferor has.

❖ CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

A negotiable instrument has the following characteristics:

1.Property: The possessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of bearer instrument, the property passes by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2.Title: The transferee of a negotiable instrument is known as 'holder in due course.' A bonafide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders of the instrument.

3.Rights: The transferee of the negotiable instrument can sue in his own name, in case of dishonour. A negotiable instrument can be transferred any

number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument topay.

4.Presumptions: Certain presumptions apply to all negotiable instruments e.g., a presumption that consideration has been paid under it. It is not necessary to write in a promissory note the words 'for value received' or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

5.Prompt payment: A negotiable instrument enables the holder to expect prompt payment because a dishonour means the ruin of the credit of all persons who are parties to the instrument.

❖ PRESUMPTIONS AS TO NEGOTIABLEINSTRUMENT

Sections 118 and 119 of the Negotiable Instrument Act lay down certain presumptions which the court presumes in regard to negotiable instruments. In other words these presumptions need not be proved as they are presumed to exist in every negotiable instrument. Until the contrary is proved the following presumptions shall be made in case of all negotiable instruments:

1.Consideration: It shall be presumed that every negotiable instrument was made drawn, accepted or endorsed for consideration. It is presumed that, consideration is present in every negotiable instrument until the contrary is presumed. The presumption of consideration, however may be rebutted by proof that the instrument had been obtained from, its lawful owner by means of fraud or undue influence.

2.Date: Where a negotiable instrument is dated, the presumption is that it has been made or drawn on such date, unless the contrary is proved.

3.Time of acceptance: Unless the contrary is proved, every accepted bill of exchange is presumed to have been accepted within a reasonable time after its issue and before its maturity. This presumption only applies when the acceptance is not dated; if the acceptance bears a date, it will prima facie be taken as evidence of the date on which it was made.

4. Time of transfer: Unless the contrary is presumed it shall be presumed that every transfer of a negotiable instrument was made before its maturity.

5. Order of endorsement: Until the contrary is proved it shall be presumed that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

6. Stamp: Unless the contrary is proved, it shall be presumed that a lost promissory note, bill of exchange or cheque was duly stamped.

7. Holder in due course: Until the contrary is proved, it shall be presumed that the holder of a negotiable instrument is the holder in due course. Every holder of a negotiable instrument is presumed to have paid consideration for it and to have taken it in good faith. But if the instrument was obtained from its lawful owner by means of an offence or fraud, the holder has to prove that he is a holder in due course.

8. Proof of protest: Section 119 lays down that in a suit upon an instrument which has been dishonoured, the court shall on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

❖ TYPES OF NEGOTIABLE INSTRUMENT

Section 13 of the Negotiable Instruments Act states that a negotiable instrument is a promissory note, bill of exchange or a cheque payable either to order or to bearer. Negotiable instruments recognised by statute are:

- (i) Promissory notes
- (ii) Bills of exchange
- (iii) Cheques. Negotiable instruments recognised by usage or custom are:
 - (i) Hundis
 - (ii) Share warrants
 - (iii) Dividend warrants
 - (iv) Bankers draft
 - (v) Circular notes
 - (vi) Bearer debentures
 - (vii) Debentures of Bombay Port Trust

- (viii) Railway receipts
- (ix) Delivery orders.

This list of negotiable instrument is not a closed chapter. With the growth of commerce, new kinds of securities may claim recognition as negotiable instruments. The courts in India usually follow the practice of English courts in according the character of negotiability to other instruments.

1. Promissory notes

Section 4 of the Act defines, “A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments.”

❖ Essential elements

An instrument to be a promissory note must possess the following elements:

1.It must be in writing: A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing, etc.) is unimportant, but it must be in any form that cannot be altered easily.

2.It must certainly an express promise or clear understanding to pay: There must be an express undertaking to pay. A mere acknowledgment is not enough. The following are not promissory notes as there is no promise to pay.

If A writes:

- (a) “Mr. B, I.O.U. (I owe you) Rs.500”
- (b) “I am liable to pay you Rs.500”.
- (c) “I have taken from you Rs. 100, whenever you ask for it have to pay”.

The following will be taken as promissory notes because there is an express promise to pay:

If A writes:

- (a) “I promise to pay B or order Rs.500”
- (b) “I acknowledge myself to be indebted to B in Rs. 1000 to be paid on demand, for the value received”.

(3) Promise to pay must be unconditional: A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. Therefore, the promise to pay must not depend upon the happening of some outside contingency or event. It must be payable absolutely.

(4) It should be signed by the maker: The person who promise to pay must sign the instrument even though it might have been written by the promisor himself. There are no restrictions regarding the form or place of signatures in the instrument. It may be in any part of the instrument. It may be in pencil or ink, a thumb mark or initials. The pro note can be signed by the authorised agent of the maker, but the agent must expressly state as to on whose behalf he is signing, otherwise he himself may be held liable as a maker. The only legal requirement is that it should indicate with certainty the identity of the person and his intention to be bound by the terms of the agreement.

(5) The maker must be certain: The note self must show clearly who is the person agreeing to undertake the liability to pay the amount. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. In case two or more persons promise to pay, they may bind themselves jointly or jointly and severally, but their liability cannot be in the alternative.

(6) The payee must be certain: The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation. A note payable to the maker himself is not pronate unless it is indorsed by him. In case, there is a mistake in the name of the payee or his designation; the note is valid, if the payee can be ascertained by evidence. Even where the name of a dead person is entered as payee in ignorance of his death, his legal representative can enforce payment.

(7) The promise should be to pay money and money only: Money means legal tender money and not old and rare coins. A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.

(8) The amount should be certain: One of the important characteristics of a promissory note is certainty—not only regarding the person to whom or by whom payment is to be made but also regarding the amount.

However, paragraph 3 of Section 5 provides that the sum does not become indefinite merely because

- (a) there is a promise to pay amount with interest at a specified rate.
- (b) the amount is to be paid at an indicated rate of exchange.
- (c) the amount is payable by installments with a condition that the whole balance shall fall due for payment on a default being committed in the payment of any one installment.

(9) Other formalities: The other formalities regarding number, place, date, consideration etc. though usually found given in the promissory notes but are not essential in law. The date of instrument is not material unless the amount is made payable at a certain time after date. Even in such a case, omission of date does not invalidate the instrument and the date of execution can be independently ascertained and proved.

On demand (or six month after date) I promise to pay Peter or order the sum of rupees one thousand with interest at 8 per cent per annum until payment.

2. Bill of exchange

Section 5 of the Act defines, “A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument”.

A bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee.

❖ Essential conditions of a bill of exchange

- (1) It must be in writing.
- (2) It must be signed by the drawer.
- (3) The drawer, drawee and payee must be certain.
- (4) The sum payable must also be certain.
- (5) It should be properly stamped.
- (6) It must contain an express order to pay money and money alone.

For example, In the following cases, there is no order to pay, but only a request to pay. Therefore, none can be considered as a bill of exchange:

(a) "I shall be highly obliged if you make it convenient to pay Rs. 1000 to Suresh".

(b) "Mr. Ramesh, please let the bearer have one thousand rupees, and place it to my account and oblige"

However, there is an order to pay, though it is politely made, in the following examples:

(a) "Please pay Rs. 500 to the order of 'A'.

(b) 'Mr. A will oblige Mr. C, by paying to the order of 'P'".

(7) The order must be unconditional.

❖ **Distinction Between Bill of Exchange and Promissory Note**

1. Number of parties: In a promissory note there are only two parties – the maker (debtor) and the payee (creditor). In a bill of exchange, there are three parties; drawer, drawee and payee; although any two out of the three may be filled by one and the same person,

2. Payment to the maker: A promissory note cannot be made payable the maker himself, while in a bill of exchange to the drawer and payee or drawee and payee may be same person.

3. Unconditional promise: A promissory note contains an unconditional promise by the maker to pay to the payee or his order, whereas in a bill of exchange, there is an unconditional order to the drawee to pay according to the direction of the drawer.

4. Prior acceptance: A note is presented for payment without any prior acceptance by the maker. A bill of exchange is payable after sight must be accepted by the drawee or someone else on his behalf, before it can be presented for payment.

5. Primary or absolute liability: The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.

6. Relation: The maker of the promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relations with the acceptor and not the payee.

7. Protest for dishonour: Foreign bill of exchange must be protested for dishonour when such protest is required to be made by the law of the country where they are drawn, but no such protest is needed in the case of a promissory note.

8. Notice of dishonour: When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate indorsers, but no such notice need be given in the case of a note.

❖ **Classification of Bills**

Bills can be classified as:

- (1) Inland and foreign bills.
- (2) Time and demand bills.
- (3) Trade and accommodation bills.

(1) Inland and Foreign Bills

Inland bill: A bill is, named as an inland bill if:

- (a) it is drawn in India on a person residing in India, whether payable in or outside India, or
- (b) it is drawn in India on a person residing outside India but payable in India.

The following are the Inland bills

- (i) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is payable in Bombay. The bill is an inland bill.
- (ii) A bill is drawn by a Delhi merchant on a person in London, but is made payable in India. This is an inland bill.
- (iii) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is accepted for payment in Japan. The bill is an inland bill.

Foreign Bill: A bill which is not an inland bill is a foreign bill. The following are the foreign bills:

1. A bill drawn outside India and made payable in India.
2. A bill drawn outside India on any person residing outside India.
3. A bill drawn in India on a person residing outside India and made payable outside India.
4. A bill drawn outside India on a person residing in India.
5. A bill drawn outside India and made payable outside India.

Bills in sets (Secs. 132 and 133): The foreign bills are generally drawn in sets of three, and each sets is termed as a 'via'.

As soon as anyone of the set is paid, the others becomes inoperative. These bills are drawn in different parts. They are drawn in order to avoid their loss or miscarriage during transit. Each part is despatched separately. To avoid delay, all the parts are sent on the same day; by different mode of conveyance.

Rules: Sections 132 and 133 provide for the following rules:

(i) A bill of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All parts make one bill and the entire bill is extinguished, i.e. when payment is made on one part- the other parts will become inoperative (Section132).

(ii) The drawer should sign and deliver all the parts but the acceptance is to be conveyed only on one of the parts. In case a person accepts or endorses different parts of the bill in favour of different persons, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill (Sec. 132).

(iii) As between holders in due course of the different parts of the same bill, he who first acquired title to any one partis entitled to the other parts and is also entitled to claim the money represented by bill (Sec. 133).

(2) Time and Demand Bill

Time bill: A bill payable after a fixed time is termed as a time bill.

In other words, bill payable "after date" is a time bill.

Demand bill: A bill payable at sight or on demand is termed as a demand bill.

(3) Trade and Accommodation Bill

Trade bill: A bill drawn and accepted for a genuine trade transaction is termed as a “trade bill”.

Accommodation bill: A bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party is termed as an “accommodation bill”.

Example: A, is need of money for three months. He induces his friend B to accept a bill of exchange drawn on him for Rs. 1,000 for three months. The bill is drawn and accepted. The bill is an “accommodation bill”. A may get the bill discounted from his bankers immediately, paying a small sum as discount. Thus, he can use the funds for three months and then just before maturity he may remit the money to B, who will meet the bill on maturity.

In the above example A is the “accommodated party” while B is the “accommodating party”.

It is to be noted that an recommendation bill may be for accommodation of both the drawer arid acceptor. In such a case, they share the proceeds of the discounted bill.

❖ **Rules regarding accommodation bills are:**

(i) In case the patty accommodated continues to hold the bill till maturity, the accommodating party shall not be liable to him for payment of, the bill since the contract between them is not based on any consideration (Section43).

(ii) But the accommodating party shall be liable to any subsequent holder for value who may be knowing the exact position that the bill is an accommodation bill and that the full consideration has not been received by the acceptor. The accommodating party can, in turn, claim compensation from the accommodated party for the amount it has been asked to pay the holder forvalue.

(iii) An accommodation bill may be negotiated after maturity. The holder or such a bill after maturity is in the same position as a holder before maturity, provided he takes it in good faith and for value (Sec.59)

In form and all other respects an accommodation bill is quite similar to an ordinary bill of exchange. There is nothing on the face of the accommodation bill to distinguish it from an ordinary trade bill.

3. Cheques

Section 6 of the Act defines “A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand”.

A cheque is bill of exchange with two more qualifications, namely,

- (i) it is always drawn on a specified banker, and
- (ii) it is always payable on demand. Consequently, all cheques are bills of exchange, but all bills are not cheques. A cheque must satisfy all the requirements of a bill of exchange; that is, it must be signed by the drawer, and must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a certain person or to the bearer of the cheque. It does not require acceptance.

❖ Distinction Between Bills of Exchange and Cheque

1. A bill of exchange is usually drawn on some person or firm, while a cheque is always drawn on a bank.
2. It is essential that a bill of exchange must be accepted before its payment can be claimed. A cheque does not require any such acceptance.
3. A cheque can only be drawn payable on demand, a bill may be also drawn payable on demand, or on the expiry of a certain period after date or sight.
4. A grace of three days is allowed in the case of time bills while no grace is given in the case of a cheque.
5. The drawer of the bill is discharged from his liability, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presenting the cheque for payment.

6. Notice of dishonour of a bill is necessary, but no such notice is necessary in the case of cheque.

7. A cheque may be crossed, but not needed in the case of bill.

8. A bill of exchange must be properly stamped, while a cheque does not require any stamp.

9. A cheque drawn to bearer payable on demand shall be valid but a bill payable on demand can never be drawn to bearer.

10. Unlike cheques, the payment of a bill cannot be countermanded by the drawer.

4. Hundis

A “Hundi” is a negotiable instrument written in an oriental language. The term hundi includes all indigenous negotiable instrument whether they be in the form of notes or bills.

The word ‘hundi’ is said to be derived from the Sanskrit word ‘hundi’, which means “to collect”. They are quite popular among the Indian merchants from very old days. They are used to finance trade and commerce and provide a facile and sound medium of currency and credit.

Hundis are governed by the custom and usage of the locality in which they are intended to be used and not by the provision of the Negotiable Instruments Act. In case there is no customary rule known as to a certain point, the court may apply the provisions of the Negotiable Instruments Act. It is also open to the parties to expressly exclude the applicability of any custom relating to hundis by agreement (Indur Chandra vs. Lachmi Bibi, 7 B.I.R. 682).

❖ PARTIES TO NEGOTIABLE INSTRUMENTS

1 Parties to Bill of Exchange

1. **Drawer:** The maker of a bill of exchange is called the ‘drawer’.

2. **Drawee:** The person directed to pay the money by the drawer is called the 'drawee',
3. **Acceptor:** After a drawee of a bill has signed his assent upon the bill, or if there are more parts than one, upon one of such parts and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the 'acceptor'.
4. **Payee:** The person named in the instrument, to whom or to whose order the money is directed to be paid by the instrument is called the 'payee'. He is the real beneficiary under the instrument. Where he signs his name and makes the instrument payable to some other person, that other person does not become the payee.
5. **Indorser:** When the holder transfers or indorses the instrument to anyone else, the holder becomes the 'indorser'.
6. **Indorsee:** The person to whom the bill is indorsed is called an 'indorsee'.
7. **Holder:** A person who is legally entitled to the possession of the negotiable instrument in his own name and to receive the amount thereof, is called a 'holder'. He is either the original payee, or the indorsee. In case the bill is payable to the bearer, the person in possession of the negotiable instrument is called the 'holder'.
8. **Drawee in case of need:** When in the bill or in any endorsement, the name of any person is given, in addition to the drawee, to be resorted to in case of need, such a person is called 'drawee in case of need'.

In such a case it is obligatory on the part of the holder to present the bill to such a drawee in case the original drawee refuses to accept the bill. The bill is taken to be dishonoured by non-acceptance or for nonpayment, only when such a drawee refuses to accept or pay the bill.

9. **Acceptor for honour:** In case the original drawee refuses to accept the bill or to furnish better security when demanded by the notary, any person who is not liable on the bill, may accept it with the consent of the holder, for the honour of any party liable on the bill. Such an acceptor is called 'acceptor for honour'.

2. Parties to a Promissory Note

1. **Maker.** He is the person who promises to pay the amount stated in the note. He is the debtor.

2. **Payee.** He is the person to whom the amount is payable i.e. the creditor.

3. **Holder.** He is the payee or the person to whom the note might have been indorsed.

4. **The indorser and indorsee** (the same as in the case of a bill).

3. Parties to a Cheque

1. **Drawer.** He is the person who draws the cheque, i.e., the depositor of money in the bank.

2. **Drawee.** It is the drawer's banker on whom the cheque has been drawn.

3. **Payee.** He is the person who is entitled to receive the payment of the cheque.

4. **The holder, indorser and indorsee** (the same as in the case of a bill or note).

❖ NEGOTIATION

Negotiation may be defined as the process by which a third party is constituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name. According to section 14 of the Act, 'when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated.' The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder thereof.

Negotiation thus requires two conditions to be fulfilled, namely:

1. There must be a transfer of the instrument to another person; and
2. The transfer must be made in such a manner as to constitute the transferee the holder of the instrument.

Handing over a negotiable instrument to a servant for safe custody is not negotiation; there must be a transfer with an intention to pass title

❖ Modes of negotiation

Negotiation may be effected in the following two ways:

1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.

Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.

2. Negotiation by endorsement and delivery (Sec. 48): A promissory note, a cheque or a bill of exchange payable to order can be negotiated only by endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.

❖ ASSIGNMENT

Bills, notes and cheques represent debts and as such have been held to be assignable without endorsement. Transfer by assignment takes place when the holder of a negotiable instrument sells his right to another person without . The assignee is entitled to get possession and can recover the amount due on the instrument from the parties thereto.

Of the two methods of transfer of negotiable instruments discussed, transfer by negotiation is recognised by the Negotiable Instrument Act.

❖ Negotiation and Assignment Distinguished

The various points of distinction between negotiation and assignment are as below:

1. Negotiation requires delivery only to constitute a transfer, whereas assignment requires a written document signed by the transferor.
2. Consideration is always presumed in the case of transfer by negotiation. In the case of assignment consideration must be proved.
3. In case of negotiation, notice of transfer is not necessary, whereas in the case of assignment notice of the transfer must be given by the assignee to the debtor.
4. The assignee takes the instrument subject to all the defects in the title of the transferor. If the title of the assignor was defective the title of the assignee is also defective. However, in case of negotiation the transferee takes the instrument free from all the defects in the title of the transferor. A

holder in due course is not affected by any defect in the title of the transferor. He may therefore have a better title than the transferor.

5. In case of negotiation a transferee can sue the third party in his own name. But an assignee cannot do so.

❖ Importance of delivery in negotiation

Delivery is a voluntary transfer of possession from one person to another. Delivery is essential to complete any contract on a negotiable instrument whether it be contract of making endorsement or acceptance. The property in the instrument does not pass unless the delivery is fully completed. Section 46 of the Act provides that a negotiable instrument is not made or accepted or endorsed unless it is delivered to a proper person. For instance, if a person signs a promissory note and keeps it with himself, he cannot be said to have made a promissory note; only when it is delivered to the payee that the promissory note is made.

Delivery may be actual or constructive. Delivery is actual when it is accompanied by actual change of possession of the instrument. Constructive delivery is effected without any change of actual possession.

❖ ENDORSEMENT

The word 'endorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

❖ Essentials of a valid endorsement

The following are the essentials of a valid endorsement:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called all on age. It should usually be in ink.
2. It must be made by the maker or holder of the instrument. A stranger cannot endorse it.
3. It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubberstamp.
4. It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But intention to transfer must be present. When in a bill or note payable to order the endorsee's name is wrongly spelt, he should when he endorses it, sign the name as spelt in the instrument and write the correct spelling within brackets after his endorsement.
5. It must be completed by delivery of the instrument. The delivery must be made by the endorser himself or by somebody on his behalf with the intention of passing property therein. Thus, where a person endorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the endorsee, the latter gets no right on the instrument.
6. It must be an endorsement of the entire bill. A partial endorsement i.e. which purports to transfer to the endorsee a part only of the amount payable does not operate as a valid endorsement.
If delivery is conditional, endorsement is not complete until the condition is fulfilled.

❖ Who may endorse?

The payee of an instrument is the rightful person to make the first endorsement. Thereafter the instrument may be endorsed by any person who has become the holder of the instrument. The maker or the drawer cannot endorse the instrument but if any of them has become the holder thereof he may endorse the instrument. (Sec. 51).

The maker or drawer cannot endorse or negotiate an instrument unless he is in lawful possession of instrument or is the holder thereof. A payee or indorsee cannot endorse or negotiate unless he is the holder thereof.

❖ Classes of endorsement

An endorsement may be:

- (1) Blank or general.
- (2) Special or full.
- (3) Partial.
- (4) Restrictive.
- (5) Conditional.

(a) Blank or general endorsement (Sections 16 and 54).

It is an endorsement when the endorser merely signs on the instrument without mentioning the name of the person in whose favour the endorsement is made. Endorsement in blank specifies no endorsee. It simply consists of the signature of the endorser on the endorsement. A negotiable instrument even though payable to order becomes a bearer instrument if endorsed in blank. Then it is transferable by mere delivery. An endorsement in blank may be followed by an endorsement in full.

Example: A bill is payable to X. X endorses the bill by simply affixing his signature. This is an endorsement in blank by X. In this case the bill becomes payable to bearer.

There is no difference between a bill or note indorsed in blank and one payable to bearer. They can both be negotiated by delivery.

(b) Special or full endorsement (Section 16)

When the endorsement contains not only the signature of the endorser but also the name of the person in whose favour the endorsement is made, then it is an endorsement in full. Thus, when endorsement is made by writing the words "Pay to A or A's order," followed by the signature of the endorser, it is an endorsement in full. In such an endorsement, it is only the endorsee who can transfer the instrument.

Conversion of endorsement in blank into endorsement in full: When a person receives a negotiable instrument in blank, he may without signing his own name, convert the blank endorsement into an endorsement in full by writing above the endorser's signature a direction to pay to or to the order of himself or some other person. In such a case the person is not liable as the endorser on the bill. In other words, the person transferring such an instrument does not incur all the liabilities of an endorser. (Section 49).

Example: A is the holder of a bill endorsed by B in blank. A writes over B's signature the words "Pay to C or order." A is not liable as endorser but the writing operates as an endorsement in full from B to C.

Where a bill is endorsed in blank, or is payable to bearer and is afterwards endorsed by another in full, the bill remains transferable by delivery with regard to all parties prior to such endorser in full. But such endorser in full cannot be sued by any one except the person in whose favour the endorsement in full is made. (Section 55).

Example: C the payee of a bill endorses it in blank and delivers it to D, who specially endorses it to E or order. E without endorsement transfers the bill to F. F as the bearer is entitled to receive payment or to sue the drawer, the acceptor, or C who endorsed the bill in blank but he cannot sue D or E.

(c) Partial endorsement (Section 56)

A partial endorsement is one which purports to transfer to the endorsee a part only of the amount payable on the instrument. Such an endorsement does not operate as a negotiation of the instrument.

Example: A is the holder of a bill for Rs.1000. He endorses it "pay to B or order Rs.500." This is a partial endorsement and invalid for the purpose of negotiation.

(d) Restrictive endorsement (Section 50)

The endorsement of an instrument may contain terms making it restrictive. Restrictive endorsement is one which either by express words restricts or prohibits the further negotiation of a bill or which expresses that it is not a

complete and unconditional transfer of the instrument but is a mere authority to the endorsee to deal with bill as directed by such endorsement.

“Pay C,” “Pay C for my use,” “Pay C for the account of B” are instances of restrictive endorsement. The endorsee under a restrictive endorsement acquires all the rights of the endorser except the right of negotiation.

❖ **Conditional or qualified endorsement**

It is open to the endorser to annex some condition to his own liability on the endorsement. An endorsement where the endorsee limits or negatives his liability by putting some condition in the instrument is called a conditional endorsement. A condition imposed by the endorser may be a condition precedent or a condition subsequent. An endorsement which says that the amount will become payable if the endorsee attains majority embodies a condition precedent. A conditional endorsement unlike the restrictive endorsement does not affect the negotiability of the instrument. It is also some times called qualified endorsement. An endorsement may be made conditional or qualified in any of the following forms:

(i) ‘Sans recourse’ endorsement: An endorser may by express word exclude his own liability thereon to the endorser or any subsequent holder in case of dishonour of the instrument. Such an endorsement is called an endorsement sans recourse (without recourse). Thus ‘Pay to A or order sans recourse, ‘pay to A or order without recourse to me,’ are instances of this type of endorsement. Here if the instrument is dishonoured, the subsequent holder or the endorsee cannot look to the endorser for payment of the same.

An agent signing a negotiable instrument may exclude his personal liability by using words to indicate that he is signing as agent only. The same rule applies to directors of a company signing instruments on behalf of a company. The intention to exclude personal liability must be clear.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him.

Example: A is the holder of a negotiable instrument. Excluding personal liability by an endorsement without recourse, he transfers the instrument to B, and B endorses it to C, who endorses it to A. A can recover the amount of the bill from B and C.

(ii) Facultative endorsement: An endorsement where the endorser extends his liability or abandons some right under a negotiable instrument,

is called a facultative endorsement. "Pay A or order, Notice of dishonour waived" is an example of facultative endorsement.

(iii) 'Sans frais' endorsement: Where the endorser does not want the endorsee or any subsequent holder, to incur any expense on his account on the instrument, the endorsement is 'sans frais'.

(iv) Liability dependent upon a contingency: Where an endorser makes his liability depend upon the happening of a contingent event, or makes the rights of the endorsee to receive the amount depend upon any contingent event, in such a case the liability of the endorser will arise only on the happening of that contingent event. Thus, an endorser may write 'Pay A or order on his marriage with B'. In such a case, the endorser will not be liable until the marriage takes place and if the marriage becomes impossible, the liability of the endorser comes to an end.

❖ **Effects of endorsement**

The legal effect of negotiation by endorsement and delivery is:

- (i) to transfer property in the instrument from the endorser to the endorsee.
- (ii) to vest in the latter the right of further negotiation, and
- (iii) a right to sue on the instrument in his own name against all the other parties (Section 50).

❖ **Cancellation of endorsement**

When the holder of a negotiable instrument, without the consent of the endorser destroys or impairs the endorser's remedy against prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity (Section 40).

❖ **Negotiation back**

'Negotiation back' is a process under which an endorsee comes again into possession of the instrument in his own right. Where a bill is re-endorsed to a previous endorser, he has no remedy against the intermediate parties to whom he was previously liable though he may further negotiate the bill.

❖ INSTRUMENTS WITHOUT CONSIDERATION

A person cannot pass a better title than he himself possesses. A person who is a mere finder of a lost goods or a thief or one who obtains any article by fraud or for an unlawful consideration does not get any title to the thing so acquired. The true owner can recover it not only from him but from any person to whom he may have sold it. But there is a difference between the transfer of ordinary goods and negotiation of negotiable instruments. The Negotiable Instruments Act provides protection to those persons who acquire the instruments in good faith and for valuable consideration. A holder in due course who has no means to discover the defect of title in an instrument of any previous holder when the instrument may have passed through several hands must be protected if he obtains the instrument for value and in good faith.

Section 58 of the Act provides that no person in possession of an instrument with a defect of title can claim the amount of the instrument unless he is a holder in due course. The moment an instrument comes into the hands of a holder in due course, not only does he get a title which is free from all defects, but having passed through his hands the instrument is cleaned of all defects.

✓ **Lost instruments**

Where the holder of a bill or note loses it, the finder gets no title to it. The finder cannot lawfully transfer it. The man who lost it can recover it from the finder. But if the instrument is transferable by mere delivery and there is nothing on its face to show that it does not belong to the finder, a holder obtaining it from the finder in good faith and for valuable consideration and before maturity is entitled to the instrument and can recover payment from all the parties thereof. If the instrument is transferable by endorsement, the finder cannot negotiate it except by forging the endorsement.

The holder of the instrument when it is lost must give a notice of loss to all the parties liable on it and also a public notice by advertisement. The holder of a lost bill remains owner in law and as such on maturity can demand payment from the acceptor, and if is dishonoured he must give notice of dishonour to prior parties. The owner of the lost bill has a right to obtain

the duplicate from the drawer and on refusal he can sue the drawer for the same.

✓ **Stolen instrument**

The position of thief of an instrument is exactly the same as that of a finder of lost instruments. A thief acquires no title to an instrument if he receives payment on it the owner can sue him for the recovery of the amount. But if an instrument payable to bearer is stolen and if transferred to a holder in due course, the owner must suffer.

✓ **Instruments obtained by fraud**

It is of the essence of all contracts including those on negotiable instruments, that they must have been brought about by free consent of the parties competent to contract. Any contract to which consent has been obtained by fraud is voidable at the option of the person whose consent was so obtained. A person who obtains an instrument by fraud gets a defective title. But if such an instrument passes into the hands of a holder in due course, the plea of fraud will not be available against him. If however, it could be shown that a person without negligence on his part was induced to sign an instrument it being represented to him to be a document of a different kind he would not be liable even to a holder in due course.

✓ **Instrument obtained for an unlawful consideration**

The general rules as to the legality of object or consideration of a contract apply to contracts on negotiable instruments also. An instrument given for an illegal consideration is void and does not convey a valid title to the holder. He cannot enforce payment against any party thereto. Thus, a bill of exchange given in consideration of future illicit cohabitation is void. But if such an instrument passes into the hands of a holder in due course, he obtains a good and complete title to it.

✓ **Forged instrument**

Forgery confers no title and a holder acquires no title to a forged instrument. A forged instrument is treated as an nullity. Forgery with the intention of obtaining title to an instrument would include:

- (1) fraudulently writing the name of an existing person,
- (2) signing the name of a fictitious person with the intention that it may pass that of a real person, or
- (3) signing one's own name with the intention that the signature may pass as the signature of some other person of the same name.

Example: A bill is payable to Ram Sunder or order. At maturity it wrongfully comes into the possession of another Ram Sunder who knows that he has no claim on the bill. He puts his own signature and the acceptor pays him. The bill is not discharged and the acceptor remains liable to Ram Sunder who is the owner of the bill.

A forged instrument has no existence in the eyes of law. A title which never came into existence cannot be improved even if it passes into the hands of a holder in due course. A forges B's signature on a promissory note and transfers the same to C who takes it in good faith for value. C gets no title of the note even though he is a holder in due course.

Examples: (a) On a note for Rs.1000, A forges B's signature to it as maker. C, a holder who takes it bonafide and for value acquires no title to the note. (b) On a bill for Rs.1000 A's acceptance to the bill is forged. The bill comes into hands of B, a bonafide holder for value, B acquires no title to the bill.

✓ **Forged endorsement**

The case of a forged endorsement is slightly different. If an instrument is endorsed in full, it cannot be negotiated except by an endorsement signed by the person to whom or to whose order the instrument is payable, for the endorsee obtains title only through his endorsement. If an endorsement is forged, the endorsee acquires no title to the instrument even if he is a bonafide purchaser. On the other hand, if the instrument is a bearer instrument or has been endorsed in blank, and there is a forged endorsement the holder gets a good title because holder in such a case derives title by delivery and not by endorsement. Bankers are specially protected against forged endorsement under section 85 of the Act.

Examples: (a) A bill is endorsed, "Pay X or order." X must endorse the bill and if his signature is forged, the bill is worthless.

(b) A bill is payable to “X or order.” It is stolen from X and the thief forges X’s endorsement and endorses it to Y who takes it in good faith and for value. Y acquires no title to the bill.

(c) A bill payable to “A or order” is endorsed in blank by A. It comes into the hands of B. B by simple delivery passes it to C. C forges B’s endorsement and transfers it to D. As D does not derive his title through the forged endorsement of B, but through the genuine endorsement of A, he obtains a good title to the instrument in spite of the intervening forged endorsement.

✓ **Instrument without consideration**

Sections 43 to 45 of the Negotiable Instrument Act deal with the consequences of failure or absence of consideration in negotiable instruments. In the case of negotiable instruments consideration is presumed to exist between the parties unless the contrary is proved. As between immediate parties, if an instrument is made, drawn or endorsed without consideration, or for a consideration which subsequently fails, it is void. As between immediate parties, failure of consideration has the same effect as the absence of consideration. For instance if a promissory note is delivered by the maker to the payee as a gift, it cannot be enforced against such maker.

Examples: (a) C the holder of a bill endorses it in blank to D receiving no value. D for value transfers it by delivery to E. E is a holder of value.

(b) A is the holder of a bill for consideration. A endorses it to B, without consideration. The property in the bill passes to B. The bill is dishonoured at maturity. B cannot sue A on the bill.

As between remote parties, the defence of absence or failure of consideration is not available at all. The holder in due course who has paid consideration can recover it from all prior parties immaterial of the fact whether any of them has received consideration or not.

Where there is a partial absence or failure of consideration, as between immediate parties, only that part can be recovered which was actually paid. However, a holder in due course is not affected by this rule. But even between immediate parties, where the part of the consideration which is

absent or cannot be ascertained without collateral inquiry, the whole of the amount is recoverable.

Examples: (a) A owes B Rs. 500. B draws a bill on A for Rs. 1000. A to accommodate B and at his request accepts it. If B sues A on the bill he can only recover Rs.500.

(b) A draws a bill on B for Rs. 500 payable to the order A. B accepts the bill but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400 and as an accommodation to A (the plaintiff) for Rs.100. A can only recover Rs. 400. But if this bill gets into the hands of a holder in due course, he can recover the full amount of Rs. 500.

❖ **HOLDER IN DUE COURSE**

Section 9 of the Act defines 'holder in due course' as any person who

- (i) for valuable consideration,
- (ii) becomes the possessor of a negotiable instrument payable to be or the indorsee or payee thereof,
- (iii) before the amount mentioned in the document becomes payable, and
- (iv) without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title. (English law does not regard payee as a holder in due course).

The essential qualification of a holder in due course may, therefore, be summed up as follows:

1. He must be a holder for valuable consideration. Consideration must not be void or illegal, e.g. a debt due on a wagering agreement. It may, however, be inadequate. A donee, who acquired title to the instrument by way of gift, is not a holder in due course, since there is no consideration to the contract. He cannot maintain any action against the debtor on the instrument. Similarly, money due on a promissory note executed in consideration of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by a suit.

2. He must have become a holder (passessor) before the date of maturity of the negotiable instrument. Therefore, a person who takes a

bill or promissory note on the day on which it becomes payable cannot claim rights of a holder in due course because he takes it after it becomes payable, as the bill or note can be discharged at any time on that day.

3. He must have become holder of the negotiable instrument in good faith. Good faith implies that he should not have accepted the negotiable instrument after knowing about any defect in the title to the instrument. But, notice of defect in the title received subsequent to the acquisition of the title will not affect the rights of a holder in due course. Besides good faith, the Indian Law also requires reasonable care on the part of the holder before he acquires title of the negotiable instrument. He should take the instrument without any negligence on his part. Reasonable care and due caution will be the proper test of his bona fides. It will not be enough to show that the holder acquired the instrument honestly, if in fact, he was negligent or careless. Under conditions of sufficient indications showing the existence of a defect in the title of the transferor, the holder will not become a holder in due course even though he might have taken the instrument without any suspicion or knowledge.

Example: (i) A bill made out by pasting together pieces of a torn bill taken without enquiry will not make the holder, a holder in due course. It was sufficient to show the intention to cancel the bill. A bill should not be taken without enquiry if suspicion has been aroused.

(ii) A post-dated cheque is not irregular. It will not preclude a bonafide purchase instrument from claiming the rights of a holder in due course. It is to be noted that it is the notice of the defect in the title of his immediate transferor which deprives a person from claiming the right of a holder in due course. Notice of defect in the title of any prior party does not affect the title of the holder.

4. A holder in due course must take the negotiable instrument complete and regular on the face of it.

Privileges of a holder in due course

1. Instrument purged of all defects: A holder in due course who gets the instrument in good faith in the course of its currency is not only himself protected against all defects of title of the person from whom he has received it, but also serves, as a channel to protect all subsequent holders. A holder in due course can recover the amount of the instrument from all previous parties although, as a matter of fact, no consideration was paid by

some of the previous parties to instrument or there was a defect of title in the party from whom he took it. Once an instrument passes through the hands of a holder in due course, it is purged of all defects. It is like a current coin. Who-so-ever takes it can recover the amount from all parties previous to such holder (Sec.53).

It is to be noted that a holder in due course can purify a defective title but cannot create any title unless the instrument happens to be a bearer one.

Examples: (i) A obtains Bs acceptance to a bill by fraud. A indorses it to C who takes it as a holder in due course. The instrument is purged of its defects and C gets a good title to it. In case C indorses it to some other person he will also get a good title to it except when he is also a party to the fraud played by A.

(ii) A bill is payable to "A or order". It is stolen from A and the thief forges A's signatures and indorses it to B who takes it as a holder in due course. B cannot recover the money. It is not a case of defective title but a case where title is absolutely absent. The thief does not get any title therefore, cannot transfer any title to it.

(iii) A bill of exchange payable to bearer is stolen. The thief delivers it to B, a holder in due course. B can recover the money of the bill.

2. Rights not affected in case of an inchoate instrument: Right of a holder in due course to recover money is not at all affected even though the instrument was originally an inchoate stamped instrument and the transferor completed the instrument for a sum greater than what was intended by the maker. (Sec.20)

3. All prior parties liable: All prior parties to the instrument (the maker or drawer, acceptor and intervening indorsers) continue to remain liable to the holder in due course until the instrument is duly satisfied. The holder in due course can file a suit against the parties liable to pay, in his own name (Sec.36)

4. Can enforce payment of a fictitious bill: Where both drawer and payee of a bill are fictitious persons, the acceptor is liable on the bill to a holder in due course. If the latter can show that the signature of the

supposed drawer and the first indorser are in the same hand, for the bill being payable to the drawer's order the fictitious drawer must indorse the bill before he can negotiate it. (Sec.42).

5. No effect of conditional delivery: Where negotiable instrument is delivered conditionally or for a special purpose and is negotiated to a holder in due course, a valid delivery of it is conclusively presumed and he acquired good title to it. (Sec.46).

Example: A, the holder of a bill indorses it "B or order" for the express purpose that B may get it discounted. B does not do so and negotiates it to C, a holder in due course. D acquires a good title to the bill and can sue all the parties on it.

6. No effect of absence of consideration or presence of an unlawful consideration: The plea of absence of or unlawful consideration is not available against the holder in due course. The party responsible will have to make payment (Sec.58).

7. Estoppel against denying original validity of instrument: The plea of original invalidity of the instrument cannot be put forth, against the holder in due course by the drawer of a bill of exchange or cheque or by an acceptor for the honour of the drawer. But where the instrument is void on the face of it e.g. promissory note made payable to "bearer", even the holder in due course cannot recover the money. Similarly, a minor cannot be prevented from taking the defence of minority. Also, there is no liability if the signatures are forged. (Sec.120).

8. Estoppel against denying capacity of the payee to indorsee: No maker of promissory note and no acceptor of a bill of exchange payable to order shall, in a suit therein by a holder in due course, be permitted to resist the claim of the holder in due course on the plea that the payee had not the capacity to indorse the instrument on the date of the note as he was a minor or insane or that he had no legal existence (Sec121)

9. Estoppel against indorser to deny capacity of parties: An indorser of the bill by his endorsement guarantees that all previous endorsements are genuine and that all prior parties had capacity to enter into valid contracts. Therefore, he on a suit thereon by the subsequent holder, cannot

deny the signature or capacity to contract of any prior party to the instrument.

❖ DISHONOUR OF A NEGOTIABLE INSTRUMENT

When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the previous parties in order to make them liable. A negotiable instrument can be dishonoured either by non-acceptance or by non-payment. A cheque and a promissory note can only be dishonoured by non-payment but a bill of exchange can be dishonoured either by non-acceptance or by non-payment.

✓ Dishonour by non-acceptance (Section 91)

A bill of exchange can be dishonoured by non-acceptance in the following ways:

1. If a bill is presented to the drawee for acceptance and he does not accept it within 48 hours from the time of presentment for acceptance. When there are several drawees even if one of them makes a default in acceptance, the bill is deemed to be dishonoured unless these several drawees are partners. Ordinarily when there are a number of drawees all of them must accept the same, but when the drawees are partners acceptance by one of them means acceptance by all.
2. When the drawee is a fictitious person or if he cannot be traced after reasonable search.
3. When the drawee is incompetent to contract, the bill is treated as dishonoured.
4. When a bill is accepted with a qualified acceptance, the holder may treat the bill of exchange having been dishonoured.
5. When the drawee has either become insolvent or is dead.
6. When presentment for acceptance is excused and the bill is not accepted. Where a drawee in case of need is named in a bill or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

✓ Dishonour by non-payment (Section 92)

A bill after being accepted has got to be presented for payment on the date of its maturity. If the acceptor fails to make payment when it is due, the bill is dishonoured by non-payment. In the case of a promissory note if the maker fails to make payment on the due date the note is dishonoured by non-payment. A cheque is dishonoured by non-payment as soon as a banker refuses to pay.

An instrument is also dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec 76).

Effect of dishonour: When a negotiable instrument is dishonoured either by non acceptance or by non-payment, the other parties thereto can be charged with liability. For example if the acceptor of a bill dishonours the bill, the holder may bring an action against the drawer and the indorsers. There is a duty cast upon the holder towards those whom he wants to make liable to give notice of dishonor to them.

Notice of dishonour: Notice of dishonour means the actual notification of the dishonour of the instrument by non-acceptance or by non-payment. When a negotiable instrument is refused acceptance or payment notice of such refusal must immediately be given to parties to whom the holder wishes to make liable. Failure to give notice of the dishonour by the holder would discharge all parties other than the maker or the acceptor (Sec.93).

Notice by whom: Where a negotiable instrument is dishonoured either by non- acceptance or by non-payment, the holder of the instrument or some party to it who is liable thereon must give a notice of dishonour to all the prior parties whom he wants to make liable on the instrument (Section 93). The agent of any such party may also be given notice of dishonour. A notice given by a stranger is not valid. Each party receiving notice of dishonour must, in order to render any prior party liable give notice of dishonour to such party within a reasonable time after he has received it. (Sec.95)

When an instrument is deposited with an agent for presentment and is dishonoured, he may either himself give notice to the parties liable on the instrument or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder. The principal, too, in his turn has the same time for giving notice as if the agent is an independent holder. (Sec. 96)

Notice to whom?: Notice of dishonour must be given to all parties to whom the holder seeks to make liable. No notice need be given to a maker, acceptor or drawee, who are the principal debtors (Section 93).

Notice of dishonour may be given to an endorser. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given. In case of the death of such a person, it may be given to his legal representative. Where he has been declared insolvent the notice may be given to him or to his official assignee (Section 94). Where a party entitled to a notice of dishonour is dead, and notice is given to him in ignorance of his death, it is sufficient (Section 97).

Mode of notice: The notice of dishonour may be oral or written or partly oral and partly written. It may be sent by post. It may be in any form but it must inform the party to whom it is given either in express terms or by reasonable intendment that the instrument has been dishonoured and in what way it has been dishonoured and that the person served with the notice will be held liable there on.

What is reasonable time?: It is not possible to lay down any hard and fast rule for determining what is reasonable time. In determining what is reasonable time, regard shall be had to the nature of the instrument, the usual course the dealings with respect to similar instrument, the distance between the parties and the nature of communication between them. In calculating reasonable time, public holidays shall be excluded (Section 105).

Section 106 lays down two different rules for determining reasonable time in connection with the notice of dishonour (a) when the holder and the party to whom notice is due carry on business or live in different places, (b) when the parties live or carry on business in the same place.

In the first case the notice of dishonour must be dispatched by the next post or on the day next after the day of dishonour. In the second case the notice of dishonour should reach its destination on the day next after dishonour.

Place of notice: The place of business or (in case such party has no place of business) at the residence of the party for whom it is intended, is the place where the notice is to be given. If the person who is to give the notice does not know the address of the person to whom the notice is to be given, he must

make reasonable efforts to find the latter's address. But if the party entitled to the notice cannot after due search be found, notice of dishonour is dispensed with.

❖ Duties of the holder upon dishonour

(1) Notice of dishonour. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment the holder must give notice of dishonour to all the parties to the instrument whom he seeks to make liable thereon. (Sec.93)

(2) Noting and protesting. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument or upon a paper attached thereto or partly upon each (Sec. 99). The holder may also within a reasonable time of the dishonour of the note or bill, get the instrument protested by notary public (Sec. 100).

(3) Suit for money. After the formality of noting and protesting is gone through, the holder may bring a suit against the parties liable for the recovery of the amount due on the instrument.

Instrument acquired after dishonour: The holder for value of a negotiable instrument as a rule, is not affected by the defect of title in his transferor. But this rule is subject to two important exceptions

- (i) when the holder acquires it after maturity and
- (ii) when he acquires it with notice of dishonour.

The holder of a negotiable instrument who acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transfer. (Sec.59).

❖ NOTING AND PROTESTING

When a negotiable instrument is dishonoured the holder may sue his prior parties i.e the drawer and the indorsers after he has given a notice of dishonour to them. The holder may need an authentic evidence of the fact that a negotiable instrument has been dishonoured. When a cheque is

dishonoured generally the bank who refuses payment returns back the cheque giving reasons in writing for the dishonour of the cheque. Sections 99 and 100 provide convenient methods of authenticating the fact of dishonour of a bill of exchange and a promissory note by means of 'noting' and 'protest'.

✓ **Noting**

As soon as a bill of exchange or a promissory note is dishonoured, the holder can after giving the parties due notice of dishonour, sue the parties liable thereon. Section 99 provides a mode of authenticating the fact of the bill having been dishonoured. Such mode is by noting the instrument. Noting is a minute recorded by a notary public on the dishonoured instrument or on a paper attached to such instrument. When a bill is to be noted, the bill is taken to a notary public who represents it for acceptance or payment as the case may be and if the drawee or acceptor still refuses to accept or pay the bill, the bill is noted as stated above.

Noting should specify in the instrument,

- (a) the fact of dishonour,
- (b) the date of dishonour,
- (c) the reason for such dishonour, if any
- (d) the notary's charges,
- (e) a reference to the notary's register and
- (f) the notary's initials.

Noting should be made by the notary within a reasonable time after dishonour. Noting and protesting is not compulsory but foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. Cheques do not require noting and protesting. Noting by itself has no legal effect. Still it has some advantages. If noting is done within a reasonable time protest may be drawn later on. Noting without protest is sufficient to allow a bill to be accepted for honour.

✓ **Protest**

Protest is a formal certificate of the notary public attesting the dishonour of the bill by non-acceptance or by non-payment. After noting, the next step for notary is to draw a certificate of protest, which is a formal declaration

on the bill or a copy thereof. The chief advantage of protest is that the court on proof of the protest shall presume the fact of dishonour.

Besides the protest for non-acceptance and for non-payment the holder may protest the bill for better security. When the acceptor of a bill becomes insolvent or suspends payment before the date of maturity, or when he absconds the holder may protest it in order to obtain better security for the amount due. For this purpose the holder may employ a notary public to make the demand on the acceptor and if refused, protest may be made. Notice of protest may be given to prior parties. When promissory notes and bills of exchange are required to be protested, notice of protest must be given instead of notice of dishonour. (Sec.102)

Inland bills may or may not be protested. But foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn (Sec. 104).

Where a bill is required to be protested under the Act within a specified time, it is sufficient if it is 'noted for protest' within such time. The formal protest may be given at anytime after the noting (Sec. 104A)

✓ **Contents of protest**

Section 101 of the Act lays down the contents of a regular and perfect protest which are as follows:

1. The instrument itself or a literal transcript of the instrument; and of everything written or printed there upon.
2. The name of the person for whom and against whom the instrument has been protested.
3. The fact of and reasons for dishonour i.e. a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public from the person concerned and he refused to give it or did not answer or that he could not be found.
4. The time and place of demand and dishonour.
5. The signature of the notary public.
6. In the case of acceptance for honour or payment for honour the person by whom or for whom such acceptance or payment was offered and effected.

Important Questions:-

1. What is Negotiable Instrument ? What are the kinds of Negotiable Instruments ? How Negotiable Instruments are different from Transferable Instruments ?
2. What is Endorsement ? Explain different kinds of Endorsement.
3. Write short note on :-
 - (a) Bills of Exchange
 - (b) Payment for Honour.
4. Write a note on promissory note.
5. Discuss the various types of crossing of cheques with their legal effects.
6. Explain the penal provisions under Negotiable Instrument Act.
7. Write the Detailed note on Noting and Protest of Negotiable Instrument
8. Define Endorsement? Explain Essential of a valid endorsement and its kinds, Rules of evidence and compensation.
9. Write a note on Holder and Holder in due course.
10. Explain the Transfer and Negotiation of Negotiable Instruments.
11. Write a note on Dishonor of Cheques.

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UNIT-III

RESERVE BANK OF INDIA ACT, 1934¹

[Act No. 2 of 1934]

[6th March 1934]

PREAMBLE

An Act to constitute a Reserve Bank of India.

Whereas it is expedient to constitute a Reserve Bank for India to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in ²[India] and generally to operate the currency any credit system of the country to its advantage;

And whereas in the present disorganization of the monetary systems of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system;

But whereas it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures;

It is hereby enacted as follows: -

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.

(1) This Act may be called the Reserve Bank of India Act, 1934.

¹[(2) It extends to the whole of India ²[* * *].

(3) This section shall come into force at once, and the remaining

provisions of this Act shall come into force on such date or dates³as the ⁴[Central Government] may, by notification in the Gazette of India, appoint.

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context, –

5[* * * * *

* * * * *]

6[(aii)] “the Bank” means the Reserve Bank of India constituted by this Act;

7[(aiii)] “Bank for International Settlements” means the body corporate established with the said name under the law of Switzerland in pursuance of an agreement dated the 20th January, 1930, signed at the Hague;]

(b) “the Central Board” means the Central Board of Directors of theBank;

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9¹[(bvi)] “Deposit Insurance Corporation” means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961;]

2[*****]

3[*****]

4[(bviiiia) “Exim Bank” means the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981;]

5[(bix) “foreign currency” and “foreign exchange” have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973;

(c) “Industrial Finance Corporation” means the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948;]

6[(ca) “International Development Association” means the “Association” referred to in the International Development Association (Status, Immunities and Privileges) Act, 1960;

(cb) “International Finance Corporation” means the “Corporation” referred to in the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

(cc) “International Monetary Fund” and “International Bank for Reconstruction and Development” mean respectively the “International Fund” and the “International Bank”, referred to in the International Monetary Fund and Bank Act, 1945;]

7[(ccc) “National Bank” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;]

8(cccc) “National Housing Bank” means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;

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2[(cv) “Reconstruction Bank” means the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India, Act, 1984;]

(d) “rupee coin” means ³[* * *] rupees which are legal tender ⁴[in⁵[India]] under the provisions of the Indian Coinage Act, 1906; ⁶[* **]

(e) “scheduled bank” means a bank included in the Second Schedule;

7[(ea) “Sponsor Bank” means a Sponsor Bank as defined in the Regional Rural Banks Act, 1976;]

8⁹[(eb)] “State Bank” means the State Bank of India constituted under the State Bank of India Act, 1955;]

10[(el) “Small Industries Bank” means the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989”.]

11[* * * * *]

12[(fi) “State Financial Corporation” means any State Financial Corporation established under the State Financial Corporations Act 1951;]

1[* * * * *]

2[(g) “Unit Trust” means the Unit Trust of India established

under section 3 of the Unit Trust of India Act,1963;]

³[(h) “agricultural operations”, “central co-operative bank”, “co-operative society”, “crops”, “marketing of crops”, “p is ci culture”, “regional rural bank” and “State co-operative bank” shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act,1981;

(i) “co-operative bank”, “co-operative credit society”, “director”, “primary agricultural credit society”, “primary co-operative bank” and “primary credit society” shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949;]

CHAPTER II

INCORPORATION, ⁴[CAPITAL], MANAGEMENT AND BUSINESS

3. Establishment and incorporation of Reserve Bank.

(1) A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the ⁵[Central Government] and of carrying on the business of banking in accordance with the provisions of this Act.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

⁶**[4. Capital of the Bank.**

The capital of the Bank shall be five crores of rupees.]

5. [Increase and reduction of share capital.]

[Rep. by Act 62 of 1948, s.7 and Sch. (w.e.f. 1-1-1949)].

6. Offices, branches and agencies.

The Bank shall, as soon as may be, establish offices in Bombay, Calcutta, ¹[Delhi and Madras] ²[* * *] and may establish branches or agencies in any other place in India ³[* * *] or, with the previous sanction of the ⁴[Central Government], elsewhere.

⁵[7. Management.

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

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank.

⁶[(3) Save as otherwise provided in regulations made by the Central Board, the Governor and in his absence the Deputy Governor nominated by him in this behalf, shall also have powers of general superintendence and direction of the affairs and the business of the Bank, and may exercise all powers and do all acts and things which may be exercised or done by the Bank.]

8. Composition of the Central Board, and term of office of Directors.

⁷[(1) The Central Board shall consist of the following Directors, namely:-

(a) a Governor and ⁸[not more than four] Deputy Governors to be appointed by the Central Government;

(b) four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted by section 9;

(c) ⁹[ten] Directors to be nominated by the Central Government; and

(d) one Government official to be nominated by the Central Government;]

(2) The Governor and Deputy Governors shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Central Board, with the approval of the ¹[Central Government]:

²[Provided that the Central Board may, if in its opinion it is necessary in the public interest so to do, permit the Governor or a Deputy Governor to undertake, at the request of the Central Government or any State Government, such part-time honorary work, whether related to the purposes of this Act or not, as is not likely to interfere with his duties as Governor or Deputy Governor, as the case may be:]

³[Provided further that the Central Government may, in consultation with the Bank, appoint a Deputy Governor as the Chairman of the National Bank, on such terms and conditions as that Government may specify.]

(3) A Deputy Governor and the Director nominated under clause (d) of sub-section (1) may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote:

⁴[Provided that when the Governor is, for any reason, unable to attend any such meeting, a Deputy Governor authorised by him in this behalf in writing may vote for him at that meeting.]

(4) The Governor and a Deputy Governor shall hold office for such term not exceeding five years as the ⁵[Central Government] may fix when appointing them, and shall be eligible for re-appointment.

⁶[A Director nominated under clause (c) of sub-section (1) shall ⁷[* * *] hold office for a period of four years ⁸[and thereafter until his successor shall have been nominated].]

A Director nominated under clause (d) of sub-section (1) shall hold office during the pleasure of the ⁹[Central Government].

(5) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

¹[2* * * * *]

(7) A retiring Director shall be eligible for re-nomination.]

³[9. Local Boards, their constitution and functions.

(1) A Local Board shall be constituted for each of the four areas specified in the First Schedule and shall consist of five members to be appointed by the Central Government to represent, as far as possible, territorial and economic interests and the interests of co-operative and indigenous banks.

(2) The members of the Local Board shall elect from amongst themselves one person to be the chairman of the Board.

⁴[(3) Every member of a Local Board shall hold office for a term of four years and thereafter until his successor shall have been appointed and shall be eligible for re-appointment.]

(4) A Local Board shall advise the Central Board on such matters as may be generally or specifically referred to it and shall perform

such duties as the Central Board may delegate to it.]

10. Disqualifications of Directors and members of Local Boards.

(1) No person may be a Director or a member of a Local Board who-

(a) is a salaried Government official ⁵[* * *] ⁶[* * *],or

(b) is, or at any time has been, adjudicated an insolvent, or has suspended payment or has compounded with his creditors, or

(c) is found lunatic or becomes of unsound mind,or

(d) is an officer or employee of any bank,or

⁷[(e) is a Director of a banking company within the meaning of clause

(c) of section 5 of the ⁸[Banking Regulation Act, 1949], or of a co- operative bank.]

(2) No two persons who are partners of the same mercantile firm, or are Directors of the same private company, or one of whom is the general agent of or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, may be Directors or members of the same Local Board at the same time.

(3) Nothing in clause (a), clause (d) or clause (e) of sub-section (1) shall apply to the Governor, or to a Deputy Governor, or to the Director nominated under clause (d) of sub-section (1) of section 8.

11. Removal from and vacation of office.

(1) The ¹[Central Government] may remove from office the Governor, or a Deputy Governor or ²[any other Director or any member of a Local Board].

3[*****]

4[(2) A Director nominated under clause (b) or clause (c) of sub-section (1) of section 8 shall cease to hold office if without leave from the Central Board he absents himself from three consecutive meetings of the Board convened under sub-section (1) of section13.]

(3) The ⁵[Central Government] shall remove from office any Director and the Central Board shall remove from office any member of a Local Board, if such Director or member becomes subject to any of the disqualifications specified in sub-section (1) or sub-section (2) of section10.

(4) A Director or member of a Local Board removed or ceasing to hold office, under the foregoing sub-sections shall not be eligible for re-appointment either as Director or as member of a Local Board until the expiry of the term for which his appointment was made.

(5) The ⁶[* * *] nomination ⁷[* * *] as Director or member of a Local Board of any person who is a member of ⁸[Parliament or the Legislature ⁹[of any State]] shall be void, unless, within two months of the date of his ¹⁰[***] nomination ¹[* * *], he ceases to be such member, and, if any Director or member of a Local Board is elected or nominated as a member of ²[Parliament or any such Legislature], he shall cease to be a Director or member of the Local Board as from the date of such election or nomination, as the case maybe.

(6) A Director may resign his office to the ³[Central Government], and a member of a Local Board may resign his office to the Central Board, and on the acceptance of the resignation the office shall become vacant.

12. Casual Vacancies and absences

(1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is

absent on leave or otherwise in circumstances not involving the vacation of his appointment, the ⁴[Central Government] may, after consideration of the recommendations made by the Central Board in this behalf, appoint another person to officiate for him, and such person may, notwithstanding anything contained in clause (d) of sub-section (1) of section 10, be an officer of the Bank.

⁵[* * * * *]

(3) Where any casual vacancy in the office of any member of a Local Board occurs ⁶[* * *], the Central Board may nominate thereto any ⁷[* * *] person recommended by the ⁸[other] members of the Local Board.

(4) Where any casual vacancy occurs in the office of a Director other than the vacancies provided for in sub-section (1), the vacancy shall be filled ⁹[by the Central Government].

(5) A person nominated ¹⁰[* * *] under this section to fill a casual vacancy shall ¹¹[* * *] hold office for the unexpired portion of the term of his predecessor.

13. Meetings of the Central Board.

(1) Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter.

(2) Any ¹[four Directors] may require the Governor to convene a meeting of the Central Board at any time and the Governor shall forthwith convene a meeting accordingly.

(3) The Governor, or ²[if for any reason, he is unable to attend,] the Deputy Governor authorized by the Governor under the proviso to subsection (3) of section 8 to vote for him, shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote.

14. to 16. [General meetings. First constitution of the Central Board. First constitution of Local Board.]

[Rep. by the Act 62 of 1948, s.7 and Sch. (w.e.f. 1-1-1949).]

17. Business which the Bank may transact.

The Bank shall be authorized to carry on and transact the several kinds of business hereinafter specified, namely:-

(1) the accepting of money on deposit without interest from and the collection of money for, ³[* * *] the ⁴[Central Government], ⁵[⁶* * *] the ⁷[State] Governments ⁸[* * *] ⁹[* * *] local authorities, banks and any other persons;

(2) (a) the purchase, sale and rediscount of bills of exchange and promissory notes,¹⁰[drawn¹¹[and payable in India]and arising out of bonafide

commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank ¹[or a State co-operative bank] ²[or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf] ³[* * *] and ⁴[maturing,-

(i) in the case of bills of exchange and promissory notes arising out of any such transaction relating to the export of goods from India, within one hundred and eighty days, and

(ii) in any other case, within ninety days, from the date of such purchase or rediscount exclusive of days of grace;]

(b) the purchase, sale and rediscount of bills of exchange and promissory notes, ⁵[drawn ⁶[and payable in India]] and bearing two or more good signatures, one of which shall be that of a scheduled bank ⁷[or a ⁸[State] co- operative bank ⁹[or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf] and

drawn or issued for the purpose of ¹⁰[financing agricultural operations] or the marketing of crops, and maturing within ¹¹[fifteen months] from the date of such purchase or rediscount, exclusive of days of grace;

12[* * * * *]

13[(bb) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing two or more good signatures, one of which shall be that of a State Co-operative bank] or a State financial corporation ¹⁴[or any financial institution, which is predominantly engaged in

the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf, and drawn or issued for the purpose of financing the production or marketing activities of cottage and small scale industries approved by the Bank and maturing within twelve months from the date of such purchase or rediscount, exclusive of days of grace, provided that the payment of the principal and interest of such bills of exchange or promissory notes is fully guaranteed by the State Government;]

(c) the purchase, sale and rediscount of bills of exchange and promissory notes ¹[drawn ²[and payable in India]] and bearing the signature of a scheduled bank, ³[* * *] and issued or drawn for the purpose of holding or trading in securities of ⁴[the Central Government ⁵[or a ⁶[State] Government]] ⁷[* * *] and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace;

(3) (a) the purchase from and sale to scheduled banks ⁸[* * *] of ⁹[foreign exchange] ¹⁰[* * *].

11[(b) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in any country outside India which is a member of the International Monetary Fund and maturing,-

(i) in the case of bills of exchange arising out of any bona fide transaction relating to the export of goods from India, within

one hundred and eighty days, and

(ii) in any other case, within ninety

days, from the date of such purchase

or rediscount:

Provided that no such purchase, sale or rediscount shall be made in India except with a scheduled bank or a State co-operative bank;]

¹[* * * * *]

²[(3A) the making to any scheduled bank or State co-operative bank, of loans and advances, against promissory notes of such bank, repayable on demand or on the expiry of fixed periods not exceeding one hundred and eighty days;

Provided that the borrowing bank furnishes a declaration in writing, to the effect that –

(i) it holds bills of exchange arising out of any transaction relating to the export of goods from India, of a value not less than the amount of such loans or advances, –

(a) drawn in India and on any place in any country outside India which is a member of the International Monetary Fund or in any other country notified in this behalf by the Bank in the Gazette of India, and

³[(b) maturing not later than one hundred and eighty days from the date of the loan or advance, and it will, so long as any part of such loans and advances remains unpaid, continue to hold such bills of exchange of a value not less than the amount of such loans or advances outstanding for the time being; or]

⁴[(ii) it has granted a pre-shipment loan or advance to an

exporter or any other person in India in order to enable him to export goods from India, the amount of the loan or advance drawn and outstanding at any time being not less than the outstanding amount of the loan or advance obtained by the borrowing bank from the Bank;]]

⁵[(3B) the making to any scheduled bank or State co-operative bank of loans and advances repayable on demand or on the expiry of fixed periods not exceeding one hundred and eighty days against promissory notes of such bank;

Provided that the borrowing bank furnishes a declaration in writing to the effect that it has made loans and advances for bona fide commercial or trade transactions or for financing agricultural operations or the marketing of crops or for other agricultural purposes as set out in the declaration and the said declaration includes such other particulars as may be required by the Bank:]

(4) themakingto⁶[***]localauthorities,scheduledbanks⁷[¹[***]
²[State] co-operative banks ³[and State Financial Corporations ⁴[* *
*]] of

loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against the security of –

(a) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament ⁵[of the United Kingdom] or by any law for the time being in force in ⁶[India]⁷[* **];

(b) gold or silver or documents of title to the same;

(c) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Bank ⁸[or as are fully guaranteed as to the repayment of the principal and payment of interest by a State Government];

(d) promissory notes of any scheduled bank ⁹[¹⁰[or ¹¹[State]] Co- operative bank], supported by documents of title to goods ¹²[such documents having been transferred], assigned, or

pledged to any such bank as security for ¹³[a loan or advance made] for bona fide commercial or trade transactions, or for the purpose of ¹⁴[financing agricultural operations] or the marketing of crops:

¹⁵[Provided that loans and advances made against the security of bills of exchange and promissory notes arising out of any transaction relating to the export of goods from India shall be repayable on demand or on the expiry of fixed periods not exceeding one hundred and eighty days];

¹[(4A) the making to any State Financial Corporation ²[* * *], of loans and advances repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government or of any State Government, of any maturity, or against bonds and debentures issued by that Corporation and guaranteed by the State Government concerned and maturing within a period not exceeding eighteen months from the date of such loan or advance:

³[Provided that the previous approval of the State Government shall be obtained for the borrowing by the State Financial Corporation and the amount of loans and advances granted to that Corporation under this clause shall not, at any time, exceed in the aggregate ⁴[twice the paid up share capital] thereof];

⁵[(4AA) the making of annual contributions to the National Rural Credit (Long Term Operations) Fund and the National Rural Credit] (Stabilization) Fund established under sections 42 and 43, respectively, of the National Bank for Agriculture and Rural Development Act, 1981;]

⁶[(4B) the making to the Industrial Finance Corporation of India ⁷[* * *] of loans and advances, –

(a) repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date of such loan or advance, against securities of the Central Government or of any State

Government; or

(b) repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government of any maturity or against bonds and debentures issued by the said Corporation and guaranteed by the Central Government and maturing within a period not exceeding eighteen months from the date of such loan or advance:

8[* * * * *]

9[(4BB) the making to any financial institution notified by the Central Government in this behalf, of loans and advances, –

(a) repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date of such loan or advance, against the securities of the Central Government or of any State Government, or

(b) repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government or of any State Government, of any maturity, or against bonds and debentures issued by that financial institution and guaranteed by the Central Government or any State Government, and maturing within a period not exceeding eighteen months from the date of such loan or advance:

Provided that the amount of loans and advances granted to a financial institution under sub-clause (b) shall not, at any time, exceed in the aggregate sixty per cent, of the paid-up share capital thereof];

1[(4BBB) the making to the Unit Trust of loans and advances -

(i) repayable on demand or on the expiry of a fixed period not exceeding ninety days from the date of such loan or advance against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest

trust money by any law for the time being in force in India; ²[*
**]

(ii) repayable on demand or within a period of eighteen months from the date of such loan or advance against the security of the bonds of the Unit Trust issued with the approval of and guaranteed by the Central Government];

³[(iii) for the purpose of any scheme other than the first unit scheme under the Unit Trust of India Act, 1963 on such terms and conditions and against the security of such other property of the Unit Trust as may be specified in this behalf by the Bank]];

⁴[(4C) the making to a Warehousing Corporation established under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956, of loans and advances, –

(a) repayable on demand or on the expiry of fixed periods not exceeding ninety days, from the date of such loan or advance, against securities of the Central Government or of any State Government, or

(b) repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government or of any State Government, of any maturity, or

against bonds and debentures issued by the Corporation to which the loan or advance is made, and guaranteed by the Central or a State Government, and maturing within a period not exceeding eighteen months from the date of such loan or advance:

Provided that the amount of loans and advances granted under clause

(b) shall not at any time exceed, in the aggregate, three crores of rupees in the case of the Central Warehousing Corporation and fifty lakhs of rupees in the case of a State Warehousing Corporation];

¹[(4D) the making to the Deposit Insurance Corporation of loans and advances; and generally assisting the Corporation in such manner and on such terms as may be determined by the Central Board];

²[(4DD) the making to the National Housing Bank of loans and advances and generally assisting the National Housing Bank in such manner and on such terms as may be determined by the Central Board];

³[(4E) the making to the National Bank of loans and advances repayable on demand or on the expiry of fixed period not exceeding eighteen months from the date of making of the loan or advance, either-

(i) against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India; or

(ii) on such other terms and conditions as the Bank may specify];

⁴[(4F) contributing to the initial capital of the Unit Trust];

⁵[(4G) the making of loans and advances to, and the purchasing of bonds and debentures of, ⁶[****] ⁷[the Exim Bank] ⁸[or the Reconstruction Bank] ⁹[or the Small Industries Bank] out of the National Industrial Credit (Long Term Operations) Fund established under section 46C;

¹[(4GG) the making of loans and advances to, and the purchasing of bonds and debentures of, the National Housing Bank out of the National Housing Credit (Long Term Operations) Fund established under section 46D];

(4H) the making to ²[*****] ³[the Small Industries Bank] of loans and advances -

(a) repayable on demand or on the expiry of fixed periods not exceeding ninety days, from the date of such loan or advance against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India; or

(b) against the security of bills of exchange or promissory notes, arising out of bona fide commercial or trade transactions bearing two or more good signatures and maturing within five years from the date of such loan or advance];

⁴[(4-I) the making to scheduled banks, ⁵[****] ⁶[the Exim Bank] ⁷[or the Reconstruction Bank or the Small Industries Bank], the Industrial Finance Corporation and any other financial institution as may, on the recommendation of the Bank, be approved in this behalf by the Central Government of loans and advances repayable on demand or otherwise and against such security and on such other terms and conditions as may be approved in this behalf by the Central Board for the purpose of enabling such banks, or financial institution, as the case may be, to purchase foreign exchange from the Bank for the purpose of financing the import of capital goods or for such other purposes as may be approved by the Central Government];

⁸[(4)] the making to the Exim Bank of loans and advances –

(a) repayable on demand or on the expiry of a fixed period not exceeding ninety days, from the date of such loan or advance against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India ; or

(b) against the security of bills of exchange or promissory notes, arising out of bona fide commercial or trade transactions bearing two or more good signatures and maturing within five years from the date of such loan or advance;]

¹[(4K) the making to the Reconstruction Bank of loans and

advances –

(a) repayable on demand or on the expiry of a fixed period not exceeding ninety days, from the date of such loan or advance against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India; or

(b) against the security of bills of exchange or promissory notes, arising out of bona fide commercial or trade transactions bearing two or more good signatures and maturing within five years from the date of such loan or advance];

(5) the making to the ²[Central Government] ³[⁴* * *] ⁵[and ⁶[State Governments]] of advances repayable in each case not later than three months from the date of the making of the advance;

⁷[(6) the issue of demand drafts, telegraphic transfers and other kinds of remittances made payable at its own offices or agencies, the purchase of telegraphic transfers, and the making, issue and circulation of bank post bills];

⁸[(6A) dealing in derivatives, and, with the approval of the Central Board, in any other financial instrument.

Explanation.-- For the purposes of this clause, "derivative" means an instrument, to be settled at a future date, whose value is derived from change in one or a combination of more than one of the following underlyings, namely:--

(a) interest rate,

(b) price of securities of the Central Government or a State Government or of such securities of a local authority as may be specified in this behalf by the Central Government,

(c) price of foreign securities,

(d) foreign exchange rate,

- (e) index of rates or prices,
- (f) credit rating or credit index,
- (g) price of gold or silver coins, or gold or silver bullion, or
- (h) any other variable of similar nature.]

1[* * * * *]

(8) the Purchase and sale of securities ²[of the Central ³[Government or a ⁴[State] Government]] of any maturity or of such securities of a local authority ⁵[* * *] as may be specified in this behalf by the ⁶[Central Government] on the recommendation of the Central Board:

Provided that securities fully guaranteed as to principal and interest by ⁷[any such Government ⁸[or authority]] shall be deemed for the purposes of this clause to be securities of such government ⁹[or authority];

10[* * * * *]

11[(8A) the purchase and sale of shares in, or the capital of ¹²[the ¹³[National Bank] ¹⁴[the Deposit Insurance Corporation], ¹⁵[*****], the State Bank¹[or

any other bank ²[or financial institution] notified by the Central Government in this behalf];

3[(8AA) the promoting, establishing, supporting or aiding in the promotion, establishment and support of any financial institution, whether as its subsidiary or otherwise;]

4[(8B) the keeping of deposits with the State Bank for such specific purposes as may be approved by the Central Government in this behalf];

(9) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities;

(10) the sale and realization of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims;

(11) the acting as agent for ⁵[* * *] the ⁶[Central Government] ⁷[or any ⁸[State] Government ⁹[* * *] or any local authority ¹⁰[* * *] ¹¹[or the Industrial Finance Corporation of India ¹²[* * *] ¹³[or any other body corporate which is established or constituted by or under any other law] ¹⁴[or the Government of any such country outside India or ¹⁵[any such person or authority] as may be approved in this behalf by the Central Government] in the transaction of any of the following kinds of business, namely; –

(a) the purchase and sale of gold or silver ¹⁶[or foreign exchange];

(a) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company;

(b) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares:

(c) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere;

(d) the management of public debt;

¹[(f)²[* * *] the issue and management of ³[* * *] bonds and debentures];

⁴[(11A) the acting as agent for the Central Government, –

⁵[(a) in guaranteeing the due performance by any small scale industrial concern, approved by the Central Government, of its obligations to any bank or other financial institution in respect

of loans and advances made, or other credit facilities provided, to it by such bank or other financial institution and the making as such agent of payments in connection with such guarantee, and

(b) in administering any scheme for subsidizing the rate of interest or other charges in relation to any loans or advances made, or other credit facilities provided, by banks or other financial institutions for the purpose of financing or facilitating any export from India and the making as such agent of payments on behalf of the Central Government;]

⁶[(12) the purchase and sale of gold or silver coins and gold and silver bullion and foreign exchange and the opening of a gold account with the principal currency authority of any foreign country or the Bank for International Settlements or any international or regional bank or financial institution formed by such principal currency authority or authorities or by the Government of any foreign country;]

⁷[(12A) the purchase and sale of securities issued by the Government of any country outside India or by any institution or body corporate established outside India and expressed to be payable in a foreign currency or any international or composite currency unit, being in the case of purchase by the Bank securities maturing within a period of ten years from the date of purchase:

Provided that in the case of securities of an institution or body corporate, the repayment of principal and payment of interest in respect of such securities shall be guaranteed by the Government of the country concerned];

¹[(12AA) lending or borrowing of securities of the Central Government or a State Government or of such securities of a local authority as may be specified in this behalf by the Central Government or foreign securities;

(12AB) dealing in repo or reverse repo:

Provided that lending or borrowing of funds by way of repo or reverse repo shall not be subject to any limitation contained in this section.

Explanation.-- For the purposes of this clause,--

(a) "repo" means an instrument for borrowing funds by selling securities of the Central Government or a State Government or of such securities of a local authority as may be specified in this behalf by the Central Government or foreign securities, with an agreement to repurchase the said securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed;

(b) "reverse repo" means an instrument for lending funds by purchasing securities of the Central Government or a State Government or of such securities of a local authority as may be specified in this behalf by the Central Government or foreign securities, with an agreement to resell the said securities on a mutually agreed future date at an agreed price which includes interest for the fund slent.]

²[(12B) the making of loans and advances in foreign currencies to scheduled banks, ³[****] ⁴[the Exim Bank], ⁵[the Reconstruction Bank or the Small Industries Bank], the Industrial Finance Corporation, any State Financial Corporation and any other financial institution as may, on the recommendation of the Bank, be approved by the Central Government and on such terms and conditions as may be specified by the Central Board in this behalf, against promissory notes of such bank or financial institution, as the case maybe:

Provided that the borrowing bank or financial institution, as the case may be, furnishes a declaration in writing to the effect that –

(a) it has made loans and advances in foreign currencies for

financing international trade or for the import of capital goods or for such other purposes as may be approved by the Central Government; and

(b) that the amount of loans or advances so made and outstanding at any time will not be less than the outstanding amount of the loans or advances obtained by it from the Bank;]

¹[(13) the opening of an account with an office outside India of any bank, including a bank incorporated in India or the making of an agency agreement with, and the acting as an agent or correspondent of, any bank incorporated outside India, or the principal currency authority of any country under the law for the time being in force in that country or any international or regional bank or financial institution formed by such principal currency authorities or foreign governments, and the investing of the funds of the Bank in the shares and securities of any such international or regional bank or financial institution or of any other foreign institution as may be approved by the Central Board in this behalf];

²[(13A) participation in any arrangement for the clearing and settlement of any amounts due from, or to, any person or authority on account of the external trade of India with any other country or group of countries or of any remittances to, or from, that country or group of countries, including the advancing, or receiving, of any amount in any currency in connection therewith, and, for that purpose, becoming, with the approval of the Central Government, a member of any international or regional clearing union of central banks, monetary or other authorities, or being associated with any such clearing arrangements, or becoming a member of any body or association formed by central banks, monetary or other similar authorities, or being associated with the same in any manner];

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed:

Provided that no money shall be borrowed under this clause from any person in India ³[* * *] other than a scheduled bank ⁴[* * *] or from any person outside India ⁵[* * *] other than a bank which is the principal currency authority of any country under the law for the time being in force in that country:

Provided further that the total amount of such borrowing from persons in India ¹[* * *] shall not at any time exceed the amount of the ¹[capital] of the Bank:

²[* * * * *]

(15) the making and issue of bank notes subject to the provisions of this Act ³[* * *]; ⁴[* * *]

⁵[(15A) the exercise of powers and functions and the performance of duties entrusted to the Bank under this act or under any other law for the time being in force;]

⁶[(15B) the providing of facilities for training in banking and for the promotion of research, where, in the opinion of the Bank, such provision may facilitate the exercise by the Bank of its powers and functions, or the discharge of its duties;]

(16) generally, the doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act ⁷[* * *].

18. Power of direct discount.

⁸[* * *] When, in the opinion of the ⁹[Bank] ¹⁰[* * *], a special occasion has arisen making it necessary or expedient that action should be taken ¹¹[under this section] for the purpose of regulating credit in the interests of Indian ¹²[* * *] trade, commerce, industry and agriculture, the Bank may, notwithstanding any limitation contained in ¹³[* * *] section 17, -

¹[(1) purchase, sell or discount any bill of exchange or

promissory note though such bill or promissory note is not eligible for purchase or discount by the Bank under that section;or]

2[* * * * *]

3[(3) make loans or advances to –

(a) a State co-operative bank, or

(b) on the recommendation of a State co-operative bank, to a co- operative society registered within the area in which the State co- operative bank operates, or

(c) any other person,

repayable on demand or on the expiry of fixed periods, not exceeding ninety days, on such terms and conditions as the Bank may consider to be sufficient.]

4[* * * * *]

5[* * * * *]

6[18A. Validity of loan or advance not to be questioned.

Notwithstanding anything to the contrary contained in any other law for the time being in force, –

(a) the validity of any loan or advance granted by the Bank in pursuance of the provisions of this Act shall not be called in question merely on the ground of non-compliance with the requirements of such other law as aforesaid or of any resolution, contract, memorandum, articles of association or other instrument:

Provided, that nothing in this clause shall render valid any loan or advance obtained by any company or co-operative society where such company or co-operative society is not

empowered by its memorandum to obtain loans or advances;

(b) where a loan or advance has been granted under clause (3A) or under clause (3B) of section 17 or a loan or advance granted under clause (3) of section 18 by the Bank to any person has been applied by such person

, wholly or in part, in making a loan or advance to any borrowers, any sum received –

(i) by the borrowing bank on account of bills of exchange in respect of which the declaration under clause (i) of the proviso to clause (3A) of section 17 has been furnished or in repayment or realisation of the outstanding loans and advances referred to in clause (ii) of the said proviso or in the proviso to clause (3B) of the said section, or

(ii) by the borrowing bank or any other person in repayment or realisation of loans and advances granted to a borrower out of funds obtained by it or by him from the Bank under section 18,

shall be utilised only for the repayment by the borrowing bank or other person, as the case may be, of the amounts due to be repaid by it or by him to the Bank, and shall be held by it or by him in trust for the Bank, until such time as the amounts are so repaid.]

19. Business which the Bank may not transact.

Save as otherwise provided in sections 17, 18, 1[42] and 45, the Bank may not –

(1) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims:

Provided that all such interests shall be disposed of at the

earliest possible moment;

²[(2) purchase the shares of any banking company or of any other company, or grant loans upon the security of any such shares;]

(3) advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and servants;

(4) make loans or advances;

(5) draw or accept bills payable otherwise than on demand;

(6) allow interest on deposits or current accounts.

CHAPTER III CENTRAL BANKING FUNCTIONS

20. Obligation of the Bank to transact Government business.

The Bank shall undertake to accept monies for account of ¹[* * *] the Central Government ²[* * *] and to make payments up to the amount standing to the credit of ³[its account], and to carry out ⁴[its exchange], remittance and other banking operations, including the management of the public debt ⁵[of the Union].

⁶[* * * *]

21. Bank to have the right to transact Government business in India.

(1) The ⁷[Central Government] ⁸[* * *] shall entrust the Bank, on such conditions as may be agreed upon, with all ⁹[its] money, remittance, exchange and banking transactions in India, and, in

particular, shall deposit free of interest all ¹⁰[its] cash balances with the Bank:

Provided that nothing in this sub-section shall prevent the ¹¹[Central Government] ¹²[* * *] from carrying on money transactions at places where the Bank has no branches or agencies, and the ¹³[Central Government] ¹⁴[***] may hold at such places such balances as ¹⁵[it] may require.

(2) The ¹[Central Government] ²[***] shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans.

(3) In the event of any failure to reach agreement on the conditions referred to in this section the ³[Central Government] shall decide what the conditions shall be.

⁴[(4) Any agreement made under this section shall be laid, as soon as may be after it is made, before Parliament.]

⁵[* * * *]

⁶[21A. Bank to transact Government business of States on agreement.

(1) The Bank may by agreement with the Government of any ⁷[***] State ⁸[* * *] undertake—

(a) all its money, remittance, exchange and banking transactions in India, including in particular, the deposit, free of interest, of all its cash balances with the Bank; and

(b) the management of the public debt of, and the issue of any new loans by, that State.

(2) Any agreement made under this section shall be laid, as soon as may be after it is made, before Parliament.]

⁹[21B. Effect of agreements made between the Bank and certain States before the 1st November, 1956.

(1) Any agreement made under section 21 or section 21A between the Bank and the Government of a State specified in the Explanation below and in force immediately before the 1st day of November, 1956, shall, as from that day have effect as if it were an agreement made on that day under section 21A between the Bank and the Government of the corresponding State subject to such modifications, if any, being of a character not affecting the general operation of the agreement, as may be agreed upon between the Bank and the Government of the corresponding State, or in default of such agreement, as may be made therein by order of the Central Government.

Explanation.- In this sub-section “corresponding State” means,-

- (a) in relation to the agreement between the Bank and the State of Andhra, the State of Andhra Pradesh;
- (b) in relation to the agreement between the Bank and any other Part- A State as it existed before the 1st day of November, 1956, the State with the same name, and
- (c) in relation to the agreement between the Bank and the Part B State of Mysore or Travancore-Cochin as it existed before the 1st day of November, 1956, the State of Mysore or Kerala respectively.

(2) Any agreement made under section 21A between the Bank and the Government of the Part B State of Hyderabad, Madhya Bharat or Saurashtra shall be deemed to have terminated on the 31st day of October, 1956.]

22. Right to issue banknotes.

(1) The Bank shall have the sole right to issue bank notes in ¹[India], and may, for a period which shall be fixed by the

²[Central Government] on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the ³[Central Government], and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the ⁴[Central Government] or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

(2) On and from the date on which this Chapter comes into force the ⁵[Central Government] shall not issue any currency notes.

23. Issue Department.

(1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34.

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

¹[* * * * *]

²[24. Denominations of notes.

(1) Subject to the provisions of sub-section (2), bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board, specify in this behalf.

(2) The Central Government may, on the recommendation of the

Central Board, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in this behalf.]

25. Form of banknotes.

The design, form and material of bank notes shall be such as may be approved by the ³[Central Government] after consideration of the recommendations made by Central Board.

26. Legal tender character of notes.

(1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in ⁴[India] in payment or on account for the amount expressed therein, and shall be guaranteed by the ⁵[Central Government].

(2) On recommendation of the Central Board the ⁶[Central Government] may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender ⁷[save at such office or agency of the Bank and to such extent as may be specified in the notification].

1[* * * * *]

2[26A. Certain bank notes to cease to be legal tender.

Notwithstanding anything contained in section 26, no bank note of the denominational value of five hundred rupees, one thousand rupees or ten thousand rupees issued before the 13th day of January, 1946, shall be legal tender in payment or on account for the amount expressed therein.]

27. Re-issue of notes.

The Bank shall not re-issue bank notes which are torn, defaced or

excessively soiled.

28. Recovery of notes lost, stolen, mutilated or imperfect.

³[* * *] Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the ⁴[Central Government] or the Bank, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note:

Provided that the Bank may, with the previous sanction of the ⁵[Central Government], prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table ⁶[* * *] of ⁷[Parliament].

⁸[* * * * *]

⁹[28A. Issue of special bank notes and special one rupee notes in certain cases.

(1) For the purpose of controlling the circulation of bank notes without India, the Bank may, notwithstanding anything contained in any other provision of this Act, issue bank notes of such design, form and material as may be approved under sub-section (3) (hereinafter in this section referred to as special bank notes) of the denominational values of five rupees, ten rupees and one hundred rupees.

(2) For the purpose of controlling the circulation of Government of India one rupee notes without India, the Central Government may, notwithstanding anything contained in any other provision of this Act or in the Currency Ordinance, 1940, issue Government of India notes of the denominational value of one rupee of such design, form and material as may be adopted under sub-section (3) (hereinafter in this section referred to as special one rupees notes).

(3) The design, form and material of the special bank notes shall be such as may be approved by the Central Government after consideration of the recommendations made by the Governor and of the special one rupee notes shall be such as the Central Government may think fit to adopt.

(4) Neither the special bank notes nor the special one rupee notes shall be legal tender in India.

(5) The special one rupee note shall be deemed to be included in the expression “rupee coin” for all the purposes of this Act except section 39, but shall be deemed not to be a currency note for any of the purposes of this Act.

(6) Where a special bank note is on its face expressed to be payable at a specified office or branch of the Bank, the obligation imposed by section 39 shall be only on the specified office or branch and, further, shall be subject to such regulations as may be made under this section.

(7) The Bank may, with the previous sanction of the Central Government, make regulations to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this section, and, in particular, the manner in which, and the conditions or limitations subject to which–

(i) bank notes and one rupee notes in circulation in any country outside India may be replaced by special notes issued under this section;

(ii) any such special notes may be exchanged for any other bank notes or one rupee notes].

29. Bank exempt from stamp duty on banknotes.

The Bank shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899, in respect of bank notes ¹[* * *] issued by it.

30. Powers of Central Government to supersede Central Board.

If in the opinion of the ¹[Central Government] the Bank fails to carry out any of the obligations imposed on it by or under this Act ²[* * *] ³[the Central Government] may, by notification in the Gazette of India, declare the Central Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the ⁴[Central Government] may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act.

(1) When action is taken under this section the ⁵[Central Government] shall cause a full report of the circumstances leading to such action and of the action taken to be laid before ⁶[Parliament] at the earliest possible opportunity and in any case within three months from the issue of the notification superseding the Board.

31. Issue of demand bills and notes.

⁷[(1)] No person in ⁸[India] other than the Bank or, as expressly authorized by this Act, the ⁹[Central Government] shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

¹⁰[(2)] notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in ¹¹[India] other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.]

32. [Penalty.]

[Rep. by the Reserve Bank of India [Amendment] Act, 1974 (51 of 1974), S. 9.]

33. Assets of the Issue Department.

(1) The assets of the Issue Department shall consist of gold coin, gold bullion,¹[foreign securities], rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as here in after defined.

²[(2) The aggregate value of the gold coin, gold bullion and foreign securities held as assets and the aggregate value of the gold coin and gold bullion so held shall not at any time be less than two hundred crores of rupees and one hundred and fifteen crores of rupees, respectively.]

³[(3) The remainder of the assets shall be held in rupee coin, Government of India rupee securities of any maturity, promissory notes drawn by the National Bank for any loans or advances under clause (4E) of section 17 and such bills of exchange and promissory notes payable in India as are eligible for purchase by the Bank under sub-clause (a) or sub-clause (b) or sub-clause (bb) of clause (2) of section 17 or under clause (1) of section 18.]

(4) For the purposes of this section, gold coin and gold bullion shall be valued at ⁴[a price not exceeding the international market price for the time being obtaining], rupee coin shall be valued at its face value, and securities shall be valued ⁵[at rates not exceeding the market rates] for the time being obtaining.

(5) Of the gold coin and gold bullion held as assets, not less than seventeen- twentieths shall be held in ⁶[India], and all gold coin and gold bullion held as assets shall be held in the custody of the Bank or its agencies;

Provided that gold belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the assets.

⁷[(6) For the purposes of this section, the foreign securities which may be held as part of the assets shall be–

(i) securities of the following kinds payable in the currency of any foreign country which is a member of the International Monetary Fund, namely:–

(a) balances with the bank which is the principal currency authority of that foreign country and any other balances or securities in foreign

currency maintained with or issued by the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association or the International Finance Corporation ¹[or Asian Development Bank] or the Bank for International Settlements or ²[any banking or financial institution ³[approved] by the Central Government] in this behalf, provided that they are repayable within a ⁴[period of ten years];

(b) bills of exchange bearing two or more good signatures and drawn on and payable at any place in that foreign country and having a maturity not exceeding ninety days; and

(c) Government securities of that foreign country maturing ⁵[within ten years];

(ii) any drawing rights representing a liability of the International Monetary Fund.]

34. Liabilities of the Issue Department.

(1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

6[* * * **]

7[* * * **]

35. [Initial assets and liabilities.]

[Rep. by Act 62 of 1948. s. 7 and Sch.(w.e.f. 1-1-1949).]

36. [Method of dealing with fluctuations in rupee coin assets.]

[Rep. by Act 55 of 1963, s. 3 (w.e.f. 1-2-1964).]

8[37. Suspension of assets requirements as to foreign securities.

Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Central Government, for periods not exceeding six months in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding three months at a time, hold as assets foreign securities of less amount in value than that required by sub-section (2) of section 33.

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38. Obligations of Government and the Bank in respect of rupee coin.

The ²[Central Government] shall undertake not ³[* * *] to put into circulation any rupees, except through the Bank ⁴[** *]; and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation ⁵[* * *].

39. Obligation to supply different forms of currency.

(1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and

shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906.

(2) The Bank shall, in exchange for currency notes or bank notes of ⁶[two] rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, in the opinion of the Bank, be required for circulation; and the ⁷[Central Government] shall supply such coins to the Bank on demand. If the ⁸[Central Government] at any time fails to supply such coins, the Bank shall be released from its obligations to supply them to the public.

⁹[40. Transactions in foreign exchange.

The Bank shall sell to or buy from any authorised person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras ¹⁰[or at such of its branches as the Central Government may, by order, determine],

foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine, having regard so far as rates of exchange are concerned to its obligations to the International Monetary Fund:

Provided that no person shall be entitled to demand to buy or sell foreign exchange of a value less than two lakhs of rupees.

Explanation.- In this section “authorised person” means a person who is entitled by or under the ¹[Foreign Exchange Regulation Act, 1973], to buy, or as the case may be, sell, the foreign exchange to which his demand relates.]

41. [Obligation to buy sterling]

[Rep. by Act 23 of 1947, s. 4 (w.e.f. 18-4-1947).

²[41A. [Obligation to provide remittance between India and Burma.]

[Rep. by Act 11 of 1947, s. 22 (w.e.f. 1-4-1947).

42. Cash reserves of scheduled banks to be kept with the Bank.

³[(1) Every bank included in the Second Schedule shall maintain with the Bank an average daily balance the amount of which shall not be less than ⁴[such per cent. of the total of the demand and time liabilities in India of such bank as shown in the return referred to in sub-section (2), as the Bank may from time to time, having regard to the needs of securing the monetary stability in the country, notify in the Gazette of India]:

⁵[Provided that the Bank may, by notification in the Gazette of India, increase the said rate to such higher rate as may be specified in the notification so however that the rate shall not be more than ⁶[twenty per cent] of the total of the demand and time liabilities.]

Explanation.- For the purposes of this section,-

(a) “average daily balance” shall mean the average of the balances held at the close of business on each day ⁷[of a fortnight];

¹[(b) “fortnight” shall mean the period from Saturday to the second following Friday, both days inclusive;]

²[(c) “liabilities” shall not include -

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the bank;

(ii) the amount of any loan taken from the Bank ³[****] ⁴[or

from the Exim Bank] ⁵[or from the Reconstruction Bank] ⁶[or from the National Housing Bank] or from the ⁷[National Bank] ⁸[* * *] or ⁹[from the Small Industries Bank].

(iii) in the case of a State co-operative bank, also any loan taken by such bank from a State Government ¹⁰[or from the National Co- operative Development Corporation established under the National Co- operative Development Corporation Act, 1962] and any deposit of money with such bank representing the reserve fund or any part thereof ¹¹[* * *] maintained with it by any co-operative society within its area of operation;]

¹²[(iv) in the case of a State co-operative bank, which has granted an advance against any balance maintained with it, such balance to the extent of the amount outstanding in respect of such advance;]

¹³[(v) in the case of a Regional Rural Bank, also any loan taken by such bank from its Sponsor Bank;]

¹⁴[(d) the aggregate of the “liabilities” of a scheduled bank which is not a State co-operative bank, to,—

(i) the State Bank;

(ii) a subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act,1959;

(iii) a corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970:

¹[(iiia) a corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;]

(iv) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act,1949;

(v) a co-operative bank; or

(vi) any other financial institution notified by the Central Government in this behalf, shall be reduced by the aggregate of the liabilities of all such banks and institutions to the scheduled bank;

(e) the aggregate of the “liabilities” of a scheduled bank which is a State co-operative bank, to,—

(i) the State Bank;

(ii) a subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act,1959;

(iii) a corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970;

²[(iiia) a corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980:]

(iv) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;or

(v) any other financial institution notified by the Central Government in this behalf, shall be reduced by the aggregate of the liabilities of all such banks and institutions to the State Co-operative bank.]

(1A) Notwithstanding anything contained in sub-section (1), the Bank may, by notification in the Gazette of India, direct that every scheduled bank shall, with effect from such date as may be specified in the notification, maintain with the Bank, in addition to the balance prescribed by or under sub-section (1), an additional average daily balance the amount of which shall not be less than the ¹[rate specified in the notification, such additional

balance being calculated with reference to the excess of the total of the demand and time liabilities of the bank as shown in the return referred to in sub-section (2) over the total of its demand and time liabilities] at the close of business on the date specified in the notification as shown by such return so however, that the additional balance shall, in no case, be more than such excess:

²[Provided that the Bank may, by a separate notification in the Gazette of India, specify different dates in respect of a bank subsequently, included in the Second Schedule.]

³[****]

⁴[(1C) The Bank may, for the purposes of this section, specify from time to time with reference to any transaction or class of transactions that such transaction or transactions shall be regarded as liability in India of a scheduled bank, and if any question arises as to whether any transaction or class of transactions shall be regarded, for the purposes of this section, as liability in India of a schedule bank, the decision of the Bank thereon shall be final.]

⁵[(2) Every scheduled bank shall send to the Bank a return signed by two responsible officers of such bank showing–

(a) the amount of its demand and time liabilities and the amount of its borrowings from banks in India ¹[classifying them into demand and time liabilities],

³ Sub-sections(1AA) and (1B) omitted by Act 26 of 2006, s. 3. Before omission, sub-sections (1AA) and (1B) stood as under:

[(1AA) Notwithstanding anything contained in sub-section (1) or subsection (1A), it shall not be necessary for any scheduled bank to maintain with the Bank any balance which shall be more than ³[twenty per cent] of the total of its demand and time liabilities as shown in the return referred to in sub-section (2).]

(1B) Where any scheduled bank maintains, in pursuance of a notification issued under the proviso to sub-section (1) or under sub-section (1A), any balance with the Bank the amount of which is not less than that required to be maintained by such notification, the Bank may pay to the scheduled bank interest at such rate or rates as may be determined by the Bank from time to time on the amount by which such balance actually maintained is in excess of the balance which the scheduled bank would have to maintain, if no such notification was issued:

Provided that no interest shall be payable on any such amount actually maintained as is in excess of the balance required to be maintained by or under sub-section (1) or under sub-section (1A).]

Provided further that where the Bank does not, under sub-section (5), demand the payment of the penalty imposed by sub-section (3), it may pay interest at such rate or rates as may be determined by the Bank from time to time on the amount actually maintained with it by the scheduled bank, notwithstanding that such amount is less than the balance required to be maintained in pursuance of a notification issued under the proviso to sub-section (1) or under sub-section (1A).]

2[* * * * *]

- (b) the total amount of legal tender notes and coins held by it in India,
- (c) the balance held by it at the Bank in India,
- (d) the balances held by it at other banks in current account and the money at call and short notice in India.,
- (e) the investments (at book value) in Central and State Government securities including treasury bills and treasury deposit receipts,

(f) the amount of advances in India,

(g) the inland bills purchased and discounted in India ³[and foreign bills purchased and discounted], ⁴[at the close of business on each alternate Friday, and every such return shall be sent not later than seven days after the date to which it relates]:

⁵[Provided that the Bank may, by notification in the Gazette of India, delete or modify or add to any of the particulars specified in the foregoing clauses:

Provided further that where ⁶[such alternate] Friday is a public holiday under the Negotiable Instruments Act, 1881, for one or more offices of a scheduled bank, the return shall give the preceding working day's figures in respect of such office or offices, but shall nevertheless be deemed to relate to that Friday:

⁷[Provided also that where the Bank is satisfied that the furnishing of a fortnightly return under this sub-section is impracticable in the case of any scheduled bank by reason of the geographical position of the bank and its branches, the Bank may allow such bank –

(i) to furnish a provisional return for the fortnight within the period aforesaid to be followed by a final return not later than twenty days after the date to which it relates, or

(ii) to furnish in lieu of a fortnightly return a monthly return to be sent not later than twenty days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month.]

¹[(2A) Where the last Friday of a month is not an alternate Friday for the purpose of sub-section (2), every scheduled bank shall

send to the Bank, a special return giving the details specified in sub-section (2) as at the close of business on such last Friday or where such last Friday is a public holiday under the Negotiable Instruments Act, 1881 as at the close of business on the preceding working day and such return shall be sent not later than seven days after the date to which it relates.]

²[(3) If the average daily balance held at the Bank by a scheduled bank during any ³[fortnight] is below the minimum prescribed by or under sub-section (1) or sub-section (1A), such Scheduled bank shall be liable to pay to the Bank in respect of that ⁴[fortnight] penal interest at a rate of three per cent, above the bank rate on the amount by which such balance with the Bank falls short of the prescribed minimum, and if during the next succeeding ⁵[fortnight], such average daily balance is still below the prescribed minimum the rates of penal interest shall be increased to a rate of five per cent, above the bank rate in respect of that ⁶[fortnight] and each subsequent ⁷[fortnight] during which the default continues on the amount by which such balance at the Bank falls short of the prescribed minimum.]

⁸[(3A) When under the provisions of sub-section (3) penal interest at the increased rate of five per cent, above the bank rate has become payable by a scheduled bank, ⁹[if thereafter the average daily balance held at the Bank during the next succeeding ¹⁰[fortnight] is still below the prescribed minimum.

(a) every director, manager or secretary of the scheduled bank, who is knowingly and wilfully a party to the default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent ¹¹[fortnight] during which the default continues, and

(b) the Bank may prohibit the scheduled bank from receiving after the said ¹[fortnight] any fresh deposit,]

and, if default is made by the scheduled bank in complying with the prohibition referred to in clause (b), every director and officer

of the scheduled bank who is knowingly and wilfully a party to such default or who through negligence or otherwise contributes to such default shall in respect of each such default be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each day after the first on which a deposit received in contravention of such prohibition is retained by the scheduled bank.

Explanation.- In this sub-section “officer” includes a ²[* * *] manager, secretary, branch manager, and branch secretary.]

(4) Any scheduled bank failing to comply with the provisions of subsection (2)³[shall be liable to pay to the Bank] a penalty of one hundred rupees for each day during which the failure continues.

⁴[(5) (a) The penalties imposed by sub-sections (3) and (4) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding the payment of the same is served on the scheduled bank, and in the event of a failure of the scheduled bank to pay the same within such period, may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting bank is situated, such direction to be made only upon an application made in this behalf to the court by the Bank;

(b) when the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the scheduled bank and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit;

(c) not with standing anything contained in this section, if the Bank is satisfied that the defaulting bank had sufficient cause for its failure to comply with the provisions of sub-sections (1), (1A) or (2), it may not demand the payment of the penal interest or the penalty, as the case may be.]

⁵[(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,-

(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking¹[in India] and which–

(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and

(iii) ²[is a State co-operative bank or a company] as defined in³[section 3 of the Companies Act, 1956, or an institution notified by the Central Government in this behalf] or a corporation or a company incorporated by or under any law in force in any place⁴[outside India];

(b) direct the exclusion from that Schedule of any scheduled bank.–

(i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or

(ii) which is, in the opinion of the Bank after making an inspection under section 35 of the ⁵[Banking Regulation Act, 1949], conducting its affairs to the detriment of the interests of its depositors, or

(iii) which goes into liquidation or otherwise ceases to carry on banking business:

Provided that the Bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under sub-clause (i) or sub-clause (ii) of clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees

or, as the case may be, of removing the defects in the conduct of its affairs:

(c) alter the description in that Schedule whenever any scheduled bank changes its name.

Explanation.- In this sub-section the expression "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of this sub-section.]

¹[(6A) In considering whether a State co-operative bank or a regional rural bank should be included in or excluded from the Second Schedule, it shall be competent for the Bank to act on a certificate from the National Bank on the question whether or not a State co-operative bank or a regional rural bank, as the case may be, satisfies the requirements as to paid-up capital and reserves or whether its affairs are not being conducted in a manner detrimental to the interests of its depositors.]

²[(7) The Bank may, for such period and subject to such conditions as may be specified, grant to any scheduled bank such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities.]

³[**43. Publication of consolidated statement by the Bank.**

The Bank shall cause to be published each ⁴[fortnight] a consolidated statement showing the aggregate liabilities and assets of all the scheduled banks together, based on the returns and information received under this Act or any other law for the time being in force.]

⁵[43A. Protection of action taken in good faith.

(1) No suit or other legal proceeding shall lie against the Bank or any of its officers for anything which is in good faith done or intended to be done in pursuance of section 42 or section 43 ⁶[or in pursuance of the provisions of Chapter IIIA].

(2) No suit or other legal proceeding shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of section 42 or section 43 ⁷[or in pursuance of the provisions of Chapter IIIA].]

44. [Power to require returns from co-operative banks.]

[Rep. by the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), s. 7 (w.e.f. 1-3-1966).]

45. Appointment of Agents.

(1) Unless otherwise directed by the Central Government with reference to any place, the Bank may, having regard to public interest, convenience of banking, banking development and such other factors which in its opinion are relevant in this regard, appoint the National Bank, or the State Bank or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, as its agent at all places, or at any place in India for such purposes as the Bank may specify.

(2) When any bank is appointed by the Bank as its agent under sub section

(1) to receive on behalf of the Bank any payment required to be made into the Bank, or any bill, hundies or other securities

required to be delivered into the Bank, under any law or rule, regulations or other instructions having the force of law, the same may be paid or delivered into the bank so appointed as the agent of the Bank.]

²[CHAPTER IIIA

COLLECTION AND FURNISHING OF CREDIT INFORMATION

45A. Definitions.

In this Chapter, unless the context otherwise requires,–

(a) “banking company” means a banking company as defined in section 5 of the ³[Banking Regulation Act, 1949], and includes the State Bank of India, ⁴[any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any other financial institution notified by the Central Government in this behalf];

(b) “borrower” means any person to whom any credit limit has been sanctioned by any banking company, whether availed of or not, and includes–

(i) in the case of a company or corporation, its subsidiaries;

(ii) in the case of a Hindu Undivided Family, any member thereof or any firm in which such member is a partner;

(iii) in the case of a firm, any partner thereof of any other firm in which such partner is a partner; and

(iv) in the case of an individual, any firm in which such individual is a partner;

(c) “credit information” means any information relating to–

(i) the amounts and the nature of loans or advances and other credit facilities granted by a banking company to any borrower or class of borrowers;

(ii) the nature of security taken from any borrower ¹[or class of borrowers] for credit facilities ²[granted to him or to such class];

(iii) the guarantee furnished by a banking company for any of its customers ³[or any class of its customers];

⁴[(iv) the means, antecedents, history of financial transactions and the credit worthiness of any borrower or class of borrowers;

(v) any other information which the Bank may consider to be relevant for the more orderly regulation of credit or credit policy.]

45B. Power of Bank to collect credit information.

The Bank may–

(a) collect, in such manner as it may think fit, credit information from banking companies; and

(b) furnish such information to any banking company in accordance with the provisions of section 45D.

45C. Power to call for returns containing credit information.

(1) For the purpose of enabling the Bank to discharge its functions under this Chapter, it may at any time direct any banking company to submit to it such statements relating to such credit information and in such form and within such time as may be

specified by the Bank from time to time.

(2) A banking company shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any instrument regulating the constitution thereof or in any agreement executed by it, relating to the secrecy of its dealings with its constituents, be bound to comply with any direction issued under sub-section(1).

45D. Procedure for furnishing credit information to banking companies.

(1) A banking company may, in connection with any financial arrangement entered into or proposed to be entered into by it, with any person, make an application to the Bank in such form as the Bank may specify requesting it to furnish the applicant with such credit information as may be specified in the application.

(2) On receipt of an application under sub-section (1), the Bank shall, as soon as may be, furnish the applicant with such credit information relating to the matters specified in the application, as may be in its possession:

Provided that the information so furnished shall not disclose the names of the banking companies which have submitted such information to the Bank.

(3) The Bank may in respect of each application levy such fees, not exceeding twenty-five rupees, as it may deem fit for furnishing credit information.

45E. Disclosure of information prohibited.

(1) Any credit information contained in any statement submitted by a banking company under section 45C or furnished by the Bank to any banking company under section 45D, shall be treated

as confidential and shall not, except for the purposes of this Chapter, be published or otherwise disclosed.

(2) Nothing in this section shall apply to–

(a) the disclosure by any banking company, with the previous permission of the Bank, of any information furnished to the Bank under section 45C:

(b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under section 45C, in such consolidated form as it may think fit without disclosing the name of any banking company or its borrowers:

¹[(c) the disclosure or publication by the banking company or by the Bank of any credit information to any other banking company or in accordance with the practice and usage customary among bankers or as permitted or required under any other law:

Provided that any credit information received by a banking company under this clause shall not be published except in accordance with the

practice and usage customary among bankers or as permitted or required under any other law.]

¹[(d) the disclosures of any credit information under the Credit Information Companies (Regulation) Act, 2005.]

(3) Notwithstanding anything contained in any law for the time being in force, no court, tribunal or other authority shall compel the Bank or any banking company to produce or to give inspection of any statement submitted by that banking company under section 45C or to disclose any credit information furnished by the Bank to that banking company under section 45D.

45F. Certain claims for compensation barred.

No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions of this Chapter.

45G. [Penalties.]

[Rep. by the Reserve Bank of India (Amendment) Act, 1974 (51 of 1974), s. 15.]

²[CHAPTER IIIB

**PROVISIONS RELATING TO NON-BANKING INSTITUTIONS
RECEIVING DEPOSITS AND FINANCIAL INSTITUTIONS**

45H. Chapter IIIB not to apply in certain cases.

The provisions of this Chapter shall not apply to the State Bank or a banking company as defined in section 5 of the ³[Banking Regulation Act, 1949] or ⁴[a corresponding new bank as defined in clause (da) of section 5 of that Act or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959] or ⁵[a Regional Rural Bank or a co-operative bank] or a primary agricultural credit society or a primary credit society]:

Provided that for the purposes of this Chapter, the ⁶[Tamil Nadu Industrial Investment Corporation Limited] shall not be deemed to be a banking company.

45I. Definitions.

In this Chapter, unless the context otherwise requires,–

1[(a) “business of a non-banking financial institution” means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f);]

2[(aa)] “company” means a company as defined in section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of section 591 of that Act:

(b) “corporation” means a corporation incorporated by an Act of any legislature;

3[(bb) “deposit” includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but does not include,—

(i) amounts raised by way of share capital;

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act,1949;

(iv) any amount received from,—

4[*****]

(b) a State Financial Corporation,

(c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964,or

(d) any other institution that may be specified by the Bank in this behalf:

(v) amounts received in the ordinary course of business, by way of-

(a) security deposit,

(b) dealership deposit,

(c) earnest money,

(d) advance against orders for goods, properties or services,

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and

(vii) any amount received by way of subscriptions in respect of chit.

Explanation I.- “Chit” has the meaning assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982.

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

1[(c) “financial institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:-

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

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:

(iii) letting or delivering of any goods to a hirer under a hire-

purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972:

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, ¹[but does not include any institution, which carries on as its principal business,–

(a) agricultural

operations; or (aa)

industrial activity; or]

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;]

²[Explanation.– For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964;]

(d) “firm” means a firm as defined in the Indian Partnership Act, 1932³[*

* *];

(e) “non-banking institution” means a company, corporation⁴[or cooperative society].

⁵[(f) “non-banking financial company” means–

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify;]

⁶[45-IA. Requirement of registration and net owned fund.

(1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without–

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank

may specify:

Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twenty-five lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a non-banking financial institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend, subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this subsection shall in no case exceed six years in the aggregate.

(4) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled:—

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

- (b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
- (c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;
- (d) that the non-banking financial company has adequate capital structure and earning prospects;
- (e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;
- (f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and
- (g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.
- (5) The Bank may, after being satisfied that the conditions specified in sub- section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.
- (6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company–
- (i) ceases to carry on the business of a non-banking financial

institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfill any of the conditions referred to in clauses

(a) to (g) of sub-section (4); or

(iv) fails–

(a) to comply with any direction issued by the Bank under the provisions of this chapter; or

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

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

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfill any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfillment of such condition;

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

(7) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:

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

Explanation.- For the purposes of this section,-

(I) "net owned fund" means-

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting there from-

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing-

(1) investments of such company in shares of-

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other non-banking financial companies;

and

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

(i) subsidiaries of such company; and

(ii) companies in the same group,

to the extent such amount exceeds ten per cent of (a) above.

(II) “subsidiaries” and “companies in the same group” shall have the same meanings assigned to them in the Companies Act,1956.

45- IB. Maintenance of percentage of assets.

(1) Every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent, or such higher percentage not exceeding twenty-five per cent, as the Bank may, from time to time and by notification in the Official Gazette, specify, of the deposits outstanding at the close of business on the last working day of the second preceding quarter:

Provided that the Bank may specify different percentages of investment in respect of different classes of non-banking financial companies.

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

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

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

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

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

Explanation,- For the purposes of this section,-

(i) “approved securities” means securities of any State Government or of the Central Government and such bonds,

both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) “unencumbered approved securities” includes the approved securities lodged by the non-banking financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

(iii) “quarter” means the period of three months ending on the last day of March, June, September or December.

45- IC. Reserve fund.

(1) Every non-banking financial company shall create a reserve fund and transfer therein a sum not less than twenty per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

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

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

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

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) together with the amount in the share

premium account is not less than the paid-up capital of the non-banking financial company.]

45J. Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money.

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

(a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public; and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

¹[45JA. Power of Bank to determine policy and issue directions.

(1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off-balance- sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the powers vested under sub- section (1), the Bank may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any non- banking financial company in particular as to–,

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non- banking financial company to any person or a company or to a group of companies].

45K. Power of Bank to collect information from non-banking institutions as to deposits and to give directions.

(1) The Bank may at any time direct that every non-banking institution shall furnish to the Bank, in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by the Bank by general or special order.

(2) Without prejudice to the generality of the power vested in the Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1) may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.

(3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non- banking institution or group of non-

banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any non-banking institution fails to comply with any direction given by the Bank under sub-section (3), the Bank may prohibit the acceptance of deposits by that non-banking institution.

1[* * * * *]

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

45L. Power of Bank to call for information from financial institutions and to give directions.

(1) If the Bank is satisfied that for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do; it may–

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Bank in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Bank by general or special order.

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

(2) Without prejudice to the generality of the power vested in the Bank under clause (a) of sub-section (1), the statements, information or particulars to be furnished by a financial institution may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

(3) In issuing directions to any financial institution under clause (b) of sub-section (1), the Bank shall have due regard to the conditions in which, and the objects for which, the institution has been established, its statutory responsibilities, if any, and the effect the business of such financial institution is likely to have on trends in the money and capital markets.

45M. Duty of non-banking institutions to furnish statements, etc., required by Bank.

It shall be the duty of every non-banking institution to furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.

¹[45MA. Powers and duties of auditors.

(1) It shall be the duty of an auditor of a non-banking institution to inquire whether or not the non-banking institution has furnished to the Bank such statements, information or particulars relating to or connected with deposits received by it, as are required to be furnished under this Chapter, and the auditor shall, except where he is satisfied on such inquiry that the non-banking institution has furnished such statements, information or particulars, make a report to the Bank giving the aggregate amount of such deposits

held by the non-banking institution;

²[(1A) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of account, issue directions to any non-banking financial company or any class of non-banking financial companies or non-banking financial companies generally or to the auditors of such non-banking financial company or companies relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account or any matter relating thereto;]

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

²[(3) Where the Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the non-banking financial company or in the interest of the depositors of such company, it may at any time by order direct that a special audit of the accounts of the non-banking financial company in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

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

³[45MB. Power of Bank to prohibit acceptance of deposit and alienation of assets.

(1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period not exceeding six months from the date of the order.

45MC. Power of Bank to file winding up petition.

(1) The Bank, on being satisfied that a non-banking financial company,-

(a) is unable to pay its debt; or

(b) has by virtue of the provisions of section 45-IA become disqualified to carry on the business of a non-banking financial institution ;or

(c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

(d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of the depositors of the company, may file an application for winding up of such non-banking financial company under the Companies Act,1956.

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

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

(4) All the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision.]

45N. Inspection.

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

(i) of any non-banking institution, including a financial institution, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to the Bank or for the purpose of obtaining any information or particulars which the non-banking institution has failed to furnish on being called upon to do so; or

(ii) of any non-banking institution being a financial institution, if the Bank considers it necessary or expedient to inspect that institution.]

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

authority may require of him, within such time as may be specified by that authority.

(3) The inspecting authority may examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof, in relation to its business and may administer an oath accordingly.

[CHAPTER IIIC]

PROHIBITION OF ACCEPTANCE OF DEPOSITS BY UNINCORPORATED BODIES

45R. Interpretation.

The words and expressions used in this Chapter and defined in Chapter IIIB shall have the meanings respectively assigned to them therein.]

²[45S. Deposits not to be accepted in certain cases.

(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit—

(i) If his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner;

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of

loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

(2) Where any person referred to in sub-section (1) holds any deposit on the 1st day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier;

Provided that if the Bank is satisfied on an application made by any person to the Bank that such person is unable to repay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

(3) On and from the 1st day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

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

- (i) they are members of a Hindu undivided family; or
- (ii) they are husband and wife; or
- (iii) the one is related to the other in the manner indicated in the List of Relatives below:-

List of relatives-

1. Father, 2. Mother (including step-mother), 3. Son (including stepson), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's

son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including stepbrother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.]

45T. Power to issue search warrants.

(1) Any court having jurisdiction to issue a search warrant under the Code of Criminal Procedure, 1973 may, on an application by an officer of the Bank or of the State Government authorised in this behalf stating his belief that certain documents relating to acceptance of deposits in contravention of the provisions of section 45S are secreted in any place within the local limits of the jurisdiction of such court, issue a warrant to search for such documents.

(2) A warrant issued under sub-section (1) shall be executed in the same manner and shall have the same effect as a search warrant issued under the Code of Criminal Procedure, 1973.]

¹[CHAPTER IIID

**REGULATION OF TRANSACTIONS IN DERIVATIVES, MONEY
MARKET INSTRUMENTS, SECURITIES, ETC.**

45U. Definitions.

For the purposes of this Chapter,--

(a) "derivative" means an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of

securities (also called "underlying"), or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps,

foreign currency-rupee swaps, foreign currency options, foreign currency- rupee options or such other instruments as may be specified by the Bank from time to time;

(b) "money market instruments" include call or notice money, term money, repo, reverse repo, certificate of deposit, commercial us ance bill, commercial paper and such other debt instrument of original or initial maturity up to one year as the Bank may specify from time to time;

(c) "repo" means an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed;

(d) "reverse repo" means an instrument for lending funds by purchasing securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent;

(e) "securities" means securities of the Central Government or a State Government or such securities of a local authority as may be specified in this behalf by the Central Government and, for the purposes of "repo" or "reverse repo", include corporate bonds and debentures.

45V. Transactions in derivatives.

(1) Notwithstanding anything contained in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or any other law for the time being in force, transactions in such derivatives, as may be specified by the Bank from time to time, shall be valid, if at least one of the parties to the transaction is the Bank, a scheduled bank,

or such other agency falling under the regulatory purview of the Bank under the Act, the Banking Regulation Act, 1949 (10 of 1949), the Foreign Exchange Management Act, 1999 (42 of 1999), or any other Act or instrument having the force of law, as may be specified by the Bank from time to time.

(2) Transactions in such derivatives, as had been specified by the Bank from time to time, shall be deemed always to have been valid, as if the provisions of sub-section (1) were in force at all material times.

45W. Power to regulate transactions in derivatives, money market instruments, etc.

(1) The Bank may, in public interest, or to regulate the financial system of the country to its advantage, determine the policy relating to interest rates or interest rate products and give directions in that behalf to all agencies or any of them, dealing in securities, money market instruments, foreign exchange, derivatives, or other instruments of like nature as the Bank may specify from time to time:

Provided that the directions issued under this sub-section shall not relate to the procedure for execution or settlement of the trades in respect of the transactions mentioned therein, on the Stock Exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956(42 of 1956).

(2) The Bank may, for the purpose of enabling it to regulate agencies referred to in sub-section (1), call for any information, statement or other particulars from them, or cause an inspection of such agencies to be made.

45X. Duty to comply with directions and furnish information.

It shall be the duty of every director or member or other body for the time being vested with the management of the affairs of the

agencies referred to in section 45W to comply with the directions given by the Bank and to submit the information or statement or particulars called for under that section.]

CHAPTER IV

GENERAL

PROVISIONS

46. Contribution by Central Government to the Reserve Fund.

The ¹[Central Government] shall transfer to the Bank rupee securities of the value of five crores of rupees to be allocated by the Bank to the Reserve Fund.

²[46A. Contribution to National Rural Credit (Long Term Operations) Fund and National Rural Credit (Stabilisation) Fund.

The Bank shall contribute every year such sums of money as it may consider necessary and feasible to do so, to the National Rural Credit (Long Term Operations) Fund and the National Rural Credit (Stabilisation) Fund established and maintained by the National Bank under sections 42 and 43, respectively, of the National Bank for Agriculture and Rural Development Act, 1981.]

³[46B. * * * *]

[Section 46-B omitted by National Bank for Agriculture & Rural Development Act, 1981 [61 of 1981] (w.e.f. 12-7-1982).]

⁴[46C. National Industrial Credit (Long Term Operations) Fund.

(1) The Bank shall establish and maintain a Fund to be known as the National Industrial Credit (Long Term Operations) Fund to which shall be credited-

(a) an initial sum of ten crores of rupees by the Bank;

(a) such further sums of money as the Bank may contribute every year:

Provided that the annual contribution during each of the five years commencing with the year ending on the 30th day of June, 1965 shall not be less than five crores of rupees:

Provided further that the Central Government may, if the circumstances so require, authorise the Bank to reduce the said sum of five crores of rupees in any year.

(2) The amount in the said Fund shall be applied by the Bank only to the following objects, namely:-

1[*****]

2[[c) the making to the Exim Bank **3**[or the Reconstruction Bank **4**[or the Small Industries Bank as the case may be,] of loans and advances for the purposes of any business of the Exim Bank **5**[or the Reconstruction Bank, or **6**[the Small Industries Bank] as the case may be]];

(d) the purchasing of bonds and debentures issued by the Exim Bank **7**[or the Reconstruction Bank, **8**[or the Small Industries Bank] as the case may be]].

⁹[46D. National Housing Credit (Long Term Operations) Fund.

(1) The Bank shall establish and maintain a Fund to be known as the National Housing Credit (Long Term Operations) Fund to which shall be credited every year such sums of money as it may consider necessary.

(2) The amount in the said Fund shall be applied by the Bank only to the following objects, namely:

(a) the making to the National Housing Bank of loans and advances for the purpose of any business of the National Housing Bank;

(b) the purchasing of bonds and debentures issued by the National Housing Bank.

¹[47. Allocation of surplus profits.

After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds ²[and for all other matters for which provision is to be made by or under this Act or which] are usually provided for by bankers, the balance of the profits shall be paid to the Central Government.]

48. Exemption of Bank from income-tax and super-tax.

(1) Notwithstanding anything contained in ³[the Income-Tax Act, 1961], or any other enactment for the time being in force relating to income-tax or super-tax, the Bank shall not be liable to pay income-tax or super-tax on any of its income, profits or gains.

⁴[* * * * *]

49. Publication of bank rate.

The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act.

⁵[50. Auditors.

(1) Not less than two auditors shall be appointed, and their remuneration fixed, by the Central Government.

(2) The auditors shall hold office for such term not exceeding one year as the Central Government may fix while appointing them, and shall be eligible for re-appointment.]

51. Appointment of special auditors by Government.

Without prejudice to anything contained in section 50, the ¹[Central Government] may at any time appoint the ²[Comptroller and Auditor- General]³[* * *] to examine and report upon the accounts of the Bank.

52. Powers and duties of auditors.

(1) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers, relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank, ⁴[* * *] employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank.

(2) The auditors shall make a report ⁵[* * *] to the ⁶[Central Government]⁷[* * *] upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory. ⁸[** *]

53. Returns.

(1) The Bank shall prepare and transmit to the ⁹[Central Government] a weekly account of the Issue Department and of the Banking Department in ¹⁰[such] from as the ¹¹[Central Government] may, by notification in the Gazette of India, prescribe. The ¹²[Central Government] shall cause these

accounts to be ¹[published in the Gazette of India at such intervals and in such modified form as it may deem fit].

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the ²[Central Government] a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors, together with a report by the Central Board on the working of the Bank throughout the year, and the ³[Central Government] shall cause such accounts and report to be published in the Gazette of India.

⁴[* * * * *]

⁵[54. Rural Credit and Development.

The Bank may maintain expert staff to study various aspects of rural credit and development and in particular it may:-

- (a) tender expert guidance and assistance to the National Bank;
- (b) conduct special studies in such areas as it may consider necessary to do so for promoting integrated rural development.]

⁶[54A. Delegation of powers.

(1) The Governor may, by general or special order, delegate to a Deputy Governor, subject to such conditions and limitations, if any, as may be specified in the order, such of the powers and functions exercisable by him ⁷[* * *] under this Act or under any

other law for the time being in force as he may deem necessary for the efficient administration of the functions of the Bank.

(2) The fact that a Deputy Governor exercises any power or does any act or thing in pursuance of this Act shall be conclusive proof of his authority to do so.]

8[54AA. Power of Bank to depute its employees to other institutions.

1[(1) The Bank may, notwithstanding anything contained in any law, or in any agreement, for the time being in force, depute any member of its staff for such period as it may think fit, -

(a) to any institution which is wholly or substantially owned by the Bank;

(b) to the Development Bank, so, however, that no such deputation shall continue after the expiration of thirty months from the commencement of section 5 of the Public Financial Institutions Laws (Amendment) Act,1975;

(c) to the Unit Trust, so, however, that no such deputation shall continue after the expiration of thirty months from the date notified by the Central Government under sub-section (1) of section 4A of the Unit Trust of India Act, 1963, and thereupon the person so deputed shall, during the period of his deputation, render such service to the institution to which he is so deputed as that institution may require.]

(2) Where a person has been deputed to an institution under subsection (1), he shall not be entitled to claim any salary, emoluments and other terms and conditions of service which he would not have been entitled to claim if he had not been so deputed.

(3) Nothing contained in this section shall empower the Bank to depute any member of its staff to any institution on any salary, emoluments or other terms and conditions which is or are less

favourable to him than that or those to which he is entitled immediately before such deputation.

(4) For the purposes of this section, an institution shall be deemed to be substantially owned by the Bank if in the capital of the institution the Bank has not less than forty per cent, share.

Explanation. - The word "capital" means, in relation to the Unit Trust, the initial capital of that Trust.]

55 and 56. [Reports by the Bank. Power to require declaration as to ownership of registered shares.]

[Rep. by Act 62 of 1948, s. 7 and Sch.(w.e.f. 1-1-1949).]

57. Liquidation of the Bank.

(1) Nothing in the ²[Companies Act, 1956], shall apply to the Bank, and the Bank shall not be placed in liquidation save by order of the ³[Central Government] and in such manner as ⁴[it may direct].

1[* * * * *]

58. Power of the Central Board to make regulations.

(1) The Central Board may, with the previous sanction of the ²[Central Government] ³[by notification in the official Gazette] make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

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

4[* * * * *]

- (f) the manner in which the business of the Central Board shall be transacted, and the procedure to be followed at meetings thereof;
- (g) the conduct of business of Local Boards and the delegation to such Boards of powers and functions;
- (h) the delegation of powers and functions of the Central Board⁵[* * *] to Deputy Governors, Directors or officers of the Bank;
- (i) the formation of Committees of the Central Board, the delegation of powers and functions of the Central Board to such Committees, and the conduct of business in such Committees;
- (j) the constitution and management of staff and superannuation funds for the officers and servants of the Bank;
- (k) the manner and form in which contracts binding on the Bank may be executed;
- (l) the provisions of an official seal of the Bank and the manner and effect of its use;
- (m) the manner and form in which the balance-sheet of the Bank shall be drawn up, and in which the accounts shall be maintained;
- (n) the remuneration of Directors of the Bank;
- (f) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank;
- (g) the regulation of clearing-houses for the banks¹(including post office savings banks).
- ²[(pp) the regulation of fund transfer through electronic means between the banks or between the banks and other financial institutions referred to in clause (c) of section 45-I,

including the laying down of the conditions subject to which banks and other financial institutions shall participate in such fund transfers, the manner of such fund transfers and the rights and obligations of the participants in such fund transfers.]

(h) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded; and

(i) generally, for the efficient conduct of the business of the Bank.

³[(3) Any regulation made under this section shall have effect from such earlier or later date as may be specified in the regulation.

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

⁴[(5)] Copies of all regulations made under this section shall be available to the public on payment.

⁵[58A. Protection of action taken in good faith.

(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or the Bank or any other person in respect of anything which is

in good faith done or intended to be done under this Act or in pursuance of any order, regulation or direction made or given there under.

(2) No suit or other legal proceeding shall lie against the Central Government or the Bank for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or in pursuance of any order, regulation or direction made or given there under.]

¹[CHAPTER

V

PENALTIES

58B. Penalties.

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

(2) If any person fails to produce any book, account or other

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

(3) If any person contravenes the provisions of section 31, he shall be punishable with fine, which may extend to the amount of the bill of exchange, hundi, promissory note or engagement for payment of money in respect whereof the offence is committed.

(4) If any person discloses any credit information, the disclosure of which is prohibited under section 45E, he shall be punishable with imprisonment for a term, which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

¹[(4A) If any person contravenes the provisions of sub-section (1) of section 45-IA, he shall be punishable with imprisonment for a term which shall not be

less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4AA) If any auditor fails to comply with any direction given or order made by the Bank under section 45MA, he shall be punishable with fine, which may extend to five thousand rupees.

(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.]

(5) If any person, ²[other than an auditor]-

(a) receives any deposit in contravention of any direction given or order made under Chapter IIIB; or

³[(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter IIIB; or]

(b) issues any prospectus or advertisement otherwise than in accordance with section 45NA or any order made under section 45J, as the case may be, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend,-

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

(ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement.

⁴[(5A) If any person contravenes any provision of section 45S, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more, or with both:

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

less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4AA) If any auditor fails to comply with any direction given or order made by the Bank under section 45MA, he shall be

punishable with fine, which may extend to five thousand rupees.

(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.]

(6) If any person, ²[other than an auditor]-

(a) receives any deposit in contravention of any direction given or order made under Chapter IIIB; or

³[(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter IIIB; or]

(b) issues any prospectus or advertisement otherwise than in accordance with section 45NA or any order made under section 45J, as the case may be, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend,-

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

(ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement.

⁴[(5A) If any person contravenes ⁴any provision of section 45S, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more, or with both:

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

not be less than one thousand rupees.

(5B) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to impose a sentence of fine in excess of the limit specified in that section on any person convicted under subsection (5A).]

(7) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, regulation or direction made or given or condition imposed there under, any person guilty of such contravention or default shall be punishable with fine which may extend to two thousand rupees and where a contravention or default is a continuing one, with further fine which may extend to one hundred rupees for every day after the first, during which the contravention or default continues.

58C. Offences by companies.

(1) Where a person committing a contravention or default referred to in section 58B is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the same was committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary, or other officer or employee of the

company, such director, manager, secretary, other officer or employee shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation 1. – Any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or the principal place of business, as the case may be, in India, of the company is situated.

Explanation 2. – For the purpose of this section, -

(a) “a company” means any body corporate and includes a corporation, a non-banking institution, a firm, a co-operative society or other association of individuals;

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

58D. Application of section 58B barred:-

Nothing contained in section 58B shall apply to, or in respect of, any matter dealt with in section 42.

58E. Cognizance of offences.

(1) No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Bank, generally or specially authorized in writing in this behalf by the Bank, and no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence:

¹[Provided that in respect of any offence punishable under sub-section (5A) of section 58B, a complaint in writing may also be made by an officer of the State Government, generally or specially authorised in writing in this behalf by that Government.]

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

58F. Application of fine.

A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in, or towards payment of, the costs of the proceedings.]

²[58G. Power of Bank to impose fine.

(1) Notwithstanding anything contained in section 58B, if the contravention or default of the nature referred to in section 58B is committed by a non- banking financial company, the Bank may impose on such non-banking financial company-

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (4A) or clause

(a) or clause (aa) of sub-section (5) of section 58B, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the non-banking financial company requiring it to show

cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard

shall also be given to such non-banking financial company.

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

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

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

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

(6) Where any complaint has been filed against a non-banking financial company in a court in respect of contravention or default of the nature referred to in section 58B, no proceedings for imposition of penalty against that non-banking financial company shall be taken under this section.]

59 to 61. [Amendment of Act 3 of 1906. Repeals, Amendment of section 11, Act 7 of 1913.]

Rep. by Act 20 of 1937, s. 3 Sch. II.

¹[THE FIRST SCHEDULE

(See section 9)

²[1. The Western Area shall consist of the States of Goa, Gujarat, Madhya Pradesh and Maharashtra and the Union Territories of Dadra and Nagar Haveli and Daman and Diu.

2. The Eastern Area shall consist of the States of Arunachal Pradesh, Assam, Bihar, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura and West Bengal and the Union Territories of Andaman and Nicobar Islands.]

3. The Northern Area shall consist of the States of Jammu & Kashmir, ¹[Punjab, Haryana,] ²[Himachal Pradesh], Rajasthan and Uttar Pradesh and Union Territories of ³[Chandigarh,] ⁴[and Delhi].

4. The Southern Area shall consist of the States of Andhra Pradesh, ⁵[Karnataka], ⁶[Tamil Nadu] and Kerala and the ⁷[Union Territories of Pondicherry and ⁸[Lakshadweep]].]

⁹[THE SECOND SCHEDULE

[See section 42 and section 2(e)]

¹⁰[SCHEDULED BANKS

A B Bank Ltd.

Abhyudaya Co-operative

Bank Ltd. ABN Amro Bank

N.V.

Abu Dhabi Commercial Bank Ltd.

Ahmedabad Mercantile Co-Op

Bank Ltd. Akola Gramin Bank,

Akola (Maharashtra)

The Akola Janata Commercial Co-operative Bank

Ltd., Akola. The Akola Urban Co-operative Bank

Ltd., Akola.

Allahabad Bank

Allahabad Kshetriya Gramin Bank, Allahabad

(Uttar Pradesh) Amanath Co-operative Bank

Ltd. Bangalore

American Express Banking

Corporation Andhra Bank

Andhra Pradesh Grameena Vikas Bank, Warangal

(Andhra Pradesh) Andhra Pradesh Mahesh Co-Op Urban

Bank Ltd.

Andhra Pradesh State Co-operative Bank Ltd.,

Hyderabad Andhra Pragathi Grameena Bank,

Kapada (Andhara Pradesh) Antwerp Diamond Bank

N.V.

Aravali Kshetriya Gramin Bank, Sawai Madhopur

(Rajasthan) Arunachal Pradesh Rural Bank,

Pasighat (Arunachal Pradesh) Aryavart Gramin

Bank, Lucknow (Uttar Pradesh)

Aurangabad Jalna Kshetriya Gramin Bank, Aurangabad

(Maharashtra) Axis Bank Ltd.
Baitarani Gramya Bank, Baripada
(Orissa) Balasore Gramya Bank,
Balasore (Orissa)
Ballia Kshetriya Gramin Bank, Ballia (Uttar
Pradesh) Bank Internasional Indonesia
Bank of America N.A.
Bank of Bahrain & Kuwait
B.S.C. Bank of Baroda
Bank of
Ceylon Bank
of India
Bank of
Maharashtra
Bank of Nova
Scotia
The Bank of Rajasthan Ltd.
Bank of Tokyo - Mitsubishi
UFJ Ltd. Barclays Bank
Bardhaman Gramin Bank, Burdwan (West
Bengal) Bareilly Kshetriya Gramin Bank,
Bareilly (Uttar Pradesh)

Baroda Gujarat Gramin Bank, Bharuch
(Gujarat) Bassein Catholic Co-operative
Bank Ltd.

Bastar Kshetriya Gramin Bank, Jagdalpur
(Chhattisgarh) Basti Gramin Bank, Basti (Uttar Pradesh)
Begusarai Kshetriya Gramin Bank, Begusarai
(Bihar) Bhagalpur-Banka Kshetriya Gramin Bank,
Bhagalpur (Bihar) Bhandara Gramin Bank,
Bhandara (Maharashtra)
Bharat Co-operative Bank
(Mumbai) Ltd. Bharati Sahakari
Bank Limited.
Bhilwara Ajmer Kshetriya Gramin Bank, Bhilwara
(Rajasthan) Bihar State Co-operative Bank Ltd.,
Patna
Bikaner Kshetriya Gramin Bank, Bikaner (Rajasthan)
Bilaspur Raipur Kshetriya Gramin Bank, Bilaspur
(Chhattisgarh) BNP Paribas
Bolangir Anchalik Gramya Bank, Bolangir
(Orissa) Bombay Mercantile Co-operative
Bank Limited Buldhana Gramin Bank,
Buldhana (Maharashtra)
Bundi-Chittorgarh Kshetriya Gramin Bank, Bundi
(Rajasthan) Cachar Gramin Bank, Silchar (Assam)
Calyon
Bank
Canara
Bank
The Catholic Syrian Bank Ltd.

Cauvery Kalpatharu Grameena Bank, Mysore
(Karnataka) Central Bank of India
Chaitanya Godavari Grameena Bank, Guntur (Andhra Pradesh)
Chambal Kshetriya Gramin Bank, Morena (Madhya Pradesh)
Champaran Kshetriya Gramin Bank, Motihari (Bihar)
Chandrapur Gadchiroli Gramin Bank, Chandrapur (Maharashtra)
Charminar Co-op.Urban Bank Ltd.
Chhindwara Seoni Kshetriya Gramin Bank,
Chhindwara (M.P.) Chikmagalur-Kodagu Grameena Bank,
Chikmagalur (Karnataka) China Trust Commercial Bank
Citi Bank N.A.
Citizen Credit Co-operative Bank Ltd., Dadar.]
City Union Bank Ltd.

Corporation Bank
Cosmos Co-operative Urban Bank Ltd.
Cuttack Gramya Bank,
Cuttack (Orissa) DBS Bank Ltd.
Deccan Grameena Bank, Rangareddy (Andhra Pradesh)
Dena Bank
Dena Gujarat Gramin Bank, Gandhinagar (Gujarat)
Deutsche Bank A.G.
Development Credit Bank Ltd.
Devipatan Kshetriya Gramin Bank, Gonda (Uttar

Pradesh) The Dhanalakshmi Bank Ltd.

Dhenkanal Gramya Bank, Dhenkanal

(Orissa) Dombivli Nagari Sahakari

Bank Ltd.

Dungarpur-Banswara Kshetriya Gramin Bank, Dungarpur

(Rajasthan) Durg-Rajanandgaon Gramin Bank,

Rajanandgaon (Chhatisgarh) Ellaquai Dehati Bank,

Srinagar (Jammu & Kashmir)

Etawah Kshetriya Gramin Bank, Etawah (Uttar

Pradesh) Faizabad Kshetriya Gramin Bank,

Faizabad (Uttar Pradesh) Fatehpur Kshetriya

Gramin Bank, Fatehpur (Uttar Pradesh) The

Federal Bank Ltd.

Gaur Gramin Bank, Malda (West Bengal)

Giridih Kshetriya Gramin Bank, Giridih

(Jharkhand) Goa State Co-operative Bank

Ltd., Panaji

Goa Urban Co-operative Bank Limited.

Gopalganj Kshetriya Gramin Bank, Gopalganj (Bihar)

Gorakhpur Kshetriya Gramin Bank, Gorakhpur

(Uttar Pradesh) Greater Bombay Co-operative Bank

Limited

Gujarat State Co-operative Bank Ltd.,

Ahmedabad Gurgaon Gramin Bank,

Gurgaon (Haryana)

Gwalior Datia Kshetriya Gramin Bank, Datia

(Madhya Pradesh) Hadoti Kshetriya Gramin Bank,

Kota (Rajasthan)

Haryana Gramin Bank, Rohtak (Haryana)

Haryana State Co-operative Bank

Ltd., Chandigarh

Hazaribagh Kshetriya Gramin Bank, Hazaribagh
(Jharkhand) HDFC Bank Ltd.

Himachal Gramin Bank, Mandi (Himachal
Pradesh) Hindon Gramin Bank, Ghaziabad

(Uttar Pradesh) The Hongkong and

Shanghai Banking Corpn. Ltd. Howrah

Gramin Bank, Howrah (West Bengal) ICICI
Bank Ltd.

IDBI Bank
Ltd.

Indian Bank

Indian Mercantile Co-operative Bank

Ltd., Lucknow Indian Overseas Bank

IndusInd Bank Ltd.

ING Vysya Bank

Ltd. J.P. Morgan

Chase Bank

Jaipur Thar Gramin Bank, Jaipur

(Rajasthan) Jalgaon Janata Sahakari
Bank Ltd.

The Jammu & Kashmir Bank Ltd.

Jammu Rural Bank, Jammu (Jammu)

&Kashmir) Janakalyan Sahakari Bank
Ltd., Bombay Janalaxmi Co-operative
BankLtd.

Janata Sahakari Bank Ltd.,Pune.

Jhabua-Dhar Kshetriya Gramin Bank, Jhabua (Madhya
Pradesh) JSC VTB Bank

Kalahandi Anchalika Gramya Bank, Bhawanipatna, (Orissa)
Kallappanna Awade Ichalkaranji Janata Sahakari Bank Ltd.,
Ichalkaranji Kalupur Commercial Co-op.BankLtd.

Kalyan Janata Sahakari Bank Ltd., Kalyan
Kamraz Rural Bank, Sopore (Jammu &
Kashmir)

Kanpur Kshetriya Gramin Bank, Kanpur (Uttar
Pradesh) Kapole Co-operative Bank Ltd.,
Bombay

Karad Urban Co-operative
Bank Ltd. The Karnataka Bank
Ltd.

Karnataka State Co-operative Bank Ltd.,
Bangalore Karnataka Vikas Grameena Bank,
Dharwad (Karnataka) The Karur Vysya Bank
Ltd.

Kashi Gomti Samyut Gramin Bank, Varanasi (Uttar
Pradesh) Kerala State Co-operative Bank Ltd.,
Thiruvananthapuram

The Khamgaon Urban Co-operative Bank Ltd.,
Khamgaon. Kisan Gramin Bank, Budaun (Uttar
Pradesh)
Koraput Panchabati Gramya Bank, Jeypore
(Orissa) Kosi Kshetriya Gramin Bank,
Pumea (Bhiar)
Kotak Mahindra Bank Ltd.
Krishna Grameena Bank, Gulbarga
(Karnataka) Krung Thai Bank Public
Company Ltd.
Kshetriya Gamin Bank, Hoshangabad (Madhya
Pradesh) Kshetriya Kisan Gramin Bank,
Mainpuri (Uttar Pradesh) Lakhimi Gaonlia
Bank, Golaghat (Assam)
The Lakshmi Vilas Bank Ltd.
Langpi Dehangi Rural Bank, Diphu (Assam)
Lucknow Kshetriya Gramin Bank, Sitapur (Uttar
Pradesh) Madhavpura Mercantile Co-Op Bank
Ltd.
Madhubani Kshetriya Gramin Bank, Madhubani
(Bihar) Madhya Bharath Gramin Bank, Sagar
(Madhya Pradesh) Madhya Bihar Gramin Bank,
Patna (Bihar)
Madhya Pradesh Rajya Sahakari Bank Maryadit., Bhopal
Mahakaushal Kshetriya Gramin Bank, Narsinghpur
(MadhyaPradesh) Mahanagar Co-operative Bank
Ltd.,Mumbai

Maharashtra State Co-operative Bank Ltd.,
Mumbai Mallabhum Gramin Bank, Bankura
(West Bengal) Malwa Gramin Bank,
Sangrur(Punjab)
Mandla Balaghat Kshetriya Gramin Bank, Mandla
(Madhya Pradesh) Manipur Rural Bank,
Imphal(Manipur)
Mapusa Urban Co-operative Bank of Goa
Ltd.,Mapusa Marathwada Gramin Bank,
Nanded (Maharashtra) Marudhar Kshetriya
Gramin Bank, Churu (Rajasthan) Marwar
Gramin Bank, Pali(Rajasthan)
Mashreq Bank p.s.c.
Mayurakshi Gramin Bank, Suri (West
Bengal) Meghalaya Rural Bank,
Shillong (Meghalaya) Mehsana Urban
Co-Op Bank Ltd.
Mewar-Aanchalik Gramin Bank, Udaipur
(Rajasthan) Mithila Kshetriya Gramin Bank,
Darbhanga (Bihar)

Mizoram Rural Bank, Aizawal
(Mizoram) Mizuho Corporate Bank
Monghyr Kshetriya Gramin Bank, Monghyr
(Bihar) Murshidabad Gramin Bank,
Berhampore (West Bengal)

Muzaffarnagar Kshetriya Gramin Bank, Muzaffarnagar
(Uttar Pradesh) Nadia Gramin Bank, Krishnanagar (West
Bengal)

Nagaland Rural Bank, Kohima (Nagaland)
Nagar Urban Co-operative Bank Ltd.,
Ahmednagar Nagpur Nagrik Sahakari
Bank Ltd.

Nainital Almora Kshetriya Gramin Bank, Nainital
(Uttaranchal) The Nainital Bank Ltd.

Narmada Malwa Gramin Bank, Indore (Madhya
Pradesh) Nasik Merchant's Co-operative Bank
Ltd.

New India Co-operative Bank Ltd.,
Bombay NKGSB Co-operative Bank
Ltd.

North Malabar Gramin Bank, Kannur
(Kerala) Nutan Nagarik Sahakari Bank
Ltd., Ahmedabad Oman International
Bank S.A.O.G.

Oriental Bank of Commerce

Orissa State Co-operative Bank Ltd.,
Bhubaneswar Palamau Kshetriya Gramin Bank,
Daltonganj (Jharkhand) Pallavan Grama Bank,
Salem (Tamil Nadu)

Pandyan Grama Bank, Virudhunagar
(Tamil Nadu) Parsik Janata Sahakari Bank
Ltd., Thane

Parvatiya Gramin Bank, Chamba (Himachal Pradesh) Pondicherry State Co-operative Bank Ltd., Pondicherry Pragathi Gramin Bank, Bellary (Karnataka) Pragjyotish Gaonlia Bank, Nalbari (Assam) Pratapgarh Kshetriya Gramin Bank, Pratapgarh (Uttar Pradesh) Prathama Bank, Moradabad (Uttar Pradesh) Pravara Sahakari Bank Ltd. Puduvai Bharathiar Grama Bank (Puducherry) Punjab & Maharashtra Co-operative Bank Ltd. Punjab & Sind Bank Punjab Gramin Bank, Kapurthala (Punjab) Punjab National Bank Punjab State Co-operative Bank Ltd., Chandigarh Puri Gramya Bank, Pipli (Orissa) Rae Bareli Kshetriya Gramin, Rae Bareli (Uttar Pradesh) Raigarh Kshetriya Gramin Bank, Raigarh (Chhattisgarh) Rajasthan Gramin Bank, Alwar (Rajasthan) Rajasthan State Co-operative Bank Ltd., Jaipur Rajkot Nagrik Sahakari Bank Ltd. Ranchi Kshetriya Gramin Bank, Ranchi (Jharkhand) Rani Laxmi Bai Kshetriya Gramin Bank, Jhansi (Uttar Pradesh)

Ratlam Mandasaur Kshetriya Gramin Bank, Mandasaur
(Madhya Pradesh) Ratnagiri Sindhudurg Gramin Bank,
Ratnagiri (Maharashtra)
The Ratnakar Bank Ltd
Rewa Sidhi Gramin Bank, Rewa (Madhya
Pradesh) Rupee Co-operative Bank Ltd.
Rushikulya Gramya Bank, Berhampur
(Orissa) Sagar Gramin Bank, Amtala
(West Bengal)
Samastipur Kshetriya Gramin Bank,
Samastipur (Bihar) Sangli Urban Co-operative
Bank Ltd.
Santhal Parganas Gramin Bank, Dumka
(Jharkhand) Saptagiri Grameena Bank,
Chitoor (Andhra Pradesh) Saran Kshetriya
Gramin Bank, Chapra (Bihar) Saraswat Co-
operative Bank Ltd.,Bombay
Sardar Bhiladwala Pardi Peoples Coop
BankLtd. Saurashtra Gramin Bank,
Rajkot(Gujarat)
SBI Commercial & International BankLtd.
Shahadol Kshetriya Gramin Bank, Shahadol (Madhya
Pradesh) Shahjahanpur Kshetriya Gramin Bank,
Shahjahanpur (Uttar Pradesh) Shamrao Vithal Co-
operative Bank Ltd.
Sharda Gramin Bank, Satna (Madhya
Pradesh) Shikshak Sahakari Bank Ltd.,

Nagpur.

Shinhan Bank

Shreyas Gramin Bank, Aligarh (Uttar Pradesh)

Singhbhum Kshetriya Gramin Bank, Chaibasa

(Jharkhand) Siwan Kshetriya Gramin Bank,

Siwan(Bihar)

Societe Generale

Solapur Gramin Bank, Solapur

(Maharashtra) Solapur Janata

Sahakari Bank Ltd.

Sonali Bank Ltd.

The South Indian Bank Ltd.

South Malabar Gramin Bank, Malappuram (Kerala)

Sriganganagar Kshetriya Gramin Bank, Sriganganagar

(Rajasthan) Standard Chartered Bank

State Bank of Bikaner &

Jaipur State Bank of

Hyderabad State Bank

ofIndia

State Bank of Indore

State Bank of Mauritius

Ltd. State Bank of

Mysore

State Bank of Patiala

State Bank of

Travancore

Subansiri Gaonlia Bank, North Lakhimpur (Assam)
Sultanpur Kshetriya Gramin Bank, Sultanpur (Uttar Pradesh)
Surat Peoples Co-op Bank Ltd.
Surguja Kshetriya Gramin Bank, Ambikapur (Chhattisgarh)
Sutluj Gramin Bank, Bhatinda (Punjab)
Syndicate Bank
Tamil Nadu State Apex Co-operative Bank Ltd.,
Chennai
Tamilnad Mercantile Bank Ltd.
Thane Bharat Sahakari Bank Ltd.
Thane Gramin Bank, Thane (Maharashtra)
Thane Janata Sahakari Bank Ltd.
Tripura Gramin Bank, Agartala (Tripura)
Triveni Kshetriya Gramin Bank, Orai (Uttar Pradesh)
UBS AG
UCO Bank
Union Bank of India
United Bank of India
Uttar Banga Kshetriya Gramin Bank, Cooch Behar (West Bengal)
Uttar Pradesh State Co-operative Bank Ltd., Lucknow

Uttaranchal Gramin Bank, Dehradun
(Uttaranchal) Vaishali Kshetriya Gramin Bank, Muzaffarpur (Bihar)
Vasavi Coop

Urban Bank Limited.

Vidisha-Bhopal Kshetriya Gramin Bank, Vidisha
(Madhya Pradesh) Vidur Gramin Bank, Bijnor (Uttar
Pradesh)

Vijaya Bank

Visveshwaraya Grameena Bank, Mandya
(Karnataka) West Bengal State Co-operative
Bank Ltd., Kolkata Yavatmal Gramin Bank,
Yavatmal (Maharashtra)

Yes Bank Ltd.

Zoroastrian Co-operative Bank Ltd., Bombay

THE THIRD SCHEDULE

[Repealed by Act 23 of 1955, s. 52 and Sch. III (w.e.f. 1-7-
1955)]

THE FOURTH SCHEDULE

[Repealed by Act 62 of 1948, s. 7 and Sch. (w.e.f. 1-1-1949)]

THE FIFTH SCHEDULE

[Repealed by the M.O. 1937]

Important Questions:-

1. Define RBI? Explain the changing role of RBI?
2. Explain the credit control techniques of RBI?
3. Discuss the credit control by RBI?
4. Define RBI? Explain the function, importance & Limitations of RBI?
5. Write the note on Incorporation under RBI Act 1934?
6. Write the note on Capital & Management under RBI Act 1934?
7. Discuss the Business of banking Companies?
8. Write the detailed note on Collection and furnishing of Credit Information.

UNIT-IV

LAW OF LIMITATION ACT, 1963

LIMITATION ACT, 1963

❖ Limitation Act – Important Aspects

One of the important laws relating to banking is the Law of Limitation; this law prompts the lending banker to remain vigilant in taking legal course of action against the defaulting borrower.

A banker may take legal action by filing a suit, preferring an appeal or applying for recovery only when the documents are within the period of limitation. This period of limitation is the period prescribed under the Limitation Act, 1963 within which any suit, appeal or application can be made.

Therefore, banks should be careful to ensure that all legal loan documents held are valid and not time barred. In other words, it is the responsibility of lenders to ensure that all loan documents are properly executed and they are all within the required limitation period as per the provisions of the Limitation Act. This is one of the crucial aspect in credit management of banks.

Period of limitation for certain documents

Period of limitation and the time from which the period begins to run is shown below:

❖ Revival of Documents

Banks are expected to hold valid legal documents as per the provisions of the Limitation Act, if the limitation period expires, then the bank should arrange to obtain fresh set of documents. However, under certain situations, the limitation period can be extended. A limitation period can be extended in the following manners:

1. Acknowledgement of debt: As per section 18 of the limitation Act, where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of

such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

2. Part payment: As per section 19, where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. However, an acknowledgment of the payment shall be in the handwriting of, or in a writing signed by, the person making the payment.

3. Fresh set of documents: When the bank obtains a fresh set of documents before the expiry of the original documents, fresh period of limitation will start from the date of execution of the fresh documents. A time-barred debt can be revived under Section 25 (3) of the Indian Contract Act only by a fresh promise in writing, signed by the borrower or his authorized agent, generally or specially authorized in that behalf. A promissory note/ fresh documents executed for the old or a barred debt will give rise to a fresh cause of action and a fresh limitation period will be available from the date of execution of such documents.

❖ **Court Holiday**

As per section 4 of the Limitation Act, where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

➤ **Limitation Period – Precautions to be taken by bank:**

1. Banks should preserve all the relevant loan documents in a secured place.
2. The documents should be under dual control of authorized persons.
3. Banks should not allow any document to become time barred as per the provisions of Law of Limitation.
4. Banks internal control and monitoring system should be very effective in the sense that the renewal of documents should be done well in advance.

BANKERS' BOOK EVIDENCE ACT, 1891

➤ **Important aspects of Bankers' Book Evidence Act, 1891**

(a) The Act extends to the whole of India except the State of Jammu & Kashmir.

(b) 'Bank' and 'banker' means

- 1) any company or corporation carrying on business of banking;
- 2) any partnership or individual to whose books, provision of this Act are made applicable;

3) any post office saving bank or money order office.

(c) Bankers' books include all books like ledgers, day books, cash books and all other records used in the ordinary business of a bank. These can be maintained in any form such as manual records, computer printouts, stored in a micro-film, magnetic tape or any other form of mechanical or electronic data. Such record can be kept either on site or at any off site location including a back-up or disaster recovery site

(d) Court means the person or persons before whom a legal proceeding is held and the 'Judge' refers to a Judge of a High Court.

(e) Legal proceeding means

- 1) any proceeding or inquiry in which evidence is or may be given;
- 2) an arbitration;
- 3) any investigation or inquiry under Code of Criminal Procedure, 1973 or under any other law as applicable for collection of evidence, conducted by a police officer or by any other person (not being a magistrate) authorised in this behalf by a magistrate or by any law for the time being in force.

(f) "certified copy" means when the books of a bank, –

(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A.

(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.

If the records are maintained in written form, a copy of any entry along with a certificate certifying at the foot of such copy clearly indicating that;

- 1) it is a true copy of such entry/entries;
- 2) the extract is taken from one of the ordinary books of the bank;
- 3) such entry was made in the ordinary course of business;
- 4) such record is still in the custody of the bank;
- 5) if the copy was obtained by a mechanical or other process a certificate is required for the authenticity of the information/data.

The certificate mentioned above should bear date and should be signed by the principal accountant or manager of the bank with his name and official designation/title.

If the records are maintained in the electronic or mechanical form (computer printouts, floppy, disc, tapes etc.,) a

➤ **copy of print out and a certificate as mentioned for the manual records:**

(a) By the principal accountant or the manager stating that it is a printout of such entry or a copy of such printout

(b) In addition to the above another certificate by a person who is in charge of computer furnishing a brief description of the computer system and other particulars like

- 1) the safety features adopted by the bank to protect the data integrity;
- 2) prevention of unauthorized entry into the system,
- 3) checks and balancing system of verification of authenticity of input and output,
- 4) if the data is retrieved and transformed, details of control system, and
- 5) in case of micro film and similar manner in which the data are stored, then the details of the arrangement for the storage and custody of such storage systems and practices.

In short, the certificate should be certified by the person in charge of the computer system certifying about the integrity, accuracy and security of the computer system and the data/ records.

A certificate of any entry in a banker's book should in all legal proceedings be received prima facie evidence of the existence of such entry, and should be admissible as if original is produced. On production of certified copy, no further evidence is required.

➤ **Section 6 deals with the inspection of books by order of Court or Judge. It states that –**

(1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Like any other organization, Banks and Financial Institutions are also required to ensure that all the applicable provisions of the various tax laws (Income Tax Act, Finance Act, etc.) are adhered to. Apart from the role of employer and beneficiary of services, banks are expected to pay tax on the interest payable to the customers as per the directives of authorities like, TDS on interest payable on fixed deposits, NRO deposits, etc. Further, income of the bank from investment like dealing in securities, also attract provisions of TDS.

❖ **In view of the above banks should ensure that:**

- (i) calculation of taxes and recovery of such taxes are correctly handled.
- (ii) deducted taxes are paid to the concerned authorities within the prescribed due dates without fail. This is one of the crucial requirement non-compliance of which attract penalty.
- (iii) Banks are required to keep proper records of tax collection and remittance.
- (iv) Banks are required to report the details to the authorities within a specific time frame. The reporting requirement would also include quarterly reporting as well as submission of half yearly and/or annual statements.
- (v) At the time of payment of salary to employees banks should deduct applicable tax at source and arrange to issue the necessary certificates for TDS

on form 16 to employees. For other deductions like payment to contractors etc., TDS on form 16A should be issued to the service providers. These TDS (16 and 16A forms) would serve (i) as evidence of tax deducted at source (ii) as a record (iii) enable the employees and service providers/professionals to claim refund of tax.

R

❖ **Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 (DRT Act)**

Recovery of the dues of loans from the borrowers through courts was a major issue for the banks and financial institutions due to huge back log of cases and the time involved. The Act came into operation from 24th June 1993.

➤ **Important highlights of DRT Act, 1993 are:**

1. This Act constituted the special 'Debt Recovery Tribunals' for speedy recovery;
2. This Act is applicable for the debt due to any Bank or Financial Institution or a consortium of them, for the recovery of debt above ` Ten lakhs;
3. This Act is applicable to the whole of India except the State of Jammu & Kashmir;
4. The term 'debt' covers the following types of debts of the Banks and Financial Institutions:
 - a) any liability inclusive of interest, whether secured or unsecured;
 - b) any liability payable under a decree or order of any Civil Court or any arbitration award or otherwise; or
 - c) any liability payable under a mortgage and subsisting on and legally recoverable on the date of application.

➤ **Some examples of interpretation of the term 'debt' by different courts are:**

- (a) In the case of *United Bank of India vs DRT* (1999) 4 SCC 69, the Supreme Court held that if the bank had alleged in the suit that the amounts were due to it from respondents as the liability of the respondents had arisen during the course of their business activity and the same was still subsisting, it is sufficient to bring such amount within the scope of definition of debt under the DRT Act and is recoverable under that Act
- (b) In *G.V. Films vs UTI* (2000) 100 Compo Cases 257 (Mad) (HC), it was held that payment made by the bank by mistake is a debt

(c) In the case of *Bank of India vs Vijay Ramniklal* AIR 1997 Guj. 75. it was held that, if an Employee commits fraud and misappropriation of money, the amount recoverable from him is not a debt within the meaning of DRT Act.

❖ Debt Recovery Tribunals

Debt recovery tribunals (DRTs) have been established by the Central Government. The Central Government decides the jurisdiction and also appoints one member as presiding officer, who should be at least a district Judge.

➤ DRT - other important aspects:

(a) When DRT has jurisdiction in such matters the Civil Courts are debarred from handling any case.

(b) The Tribunal and Appellate Tribunal function from the appointed day, which is declared in notification. Their duties, powers and jurisdiction are well defined. From the date of establishing the Tribunal, i.e., the appointed day, no court or other authority should have any jurisdiction, powers or authority to deal with in any way in recovery cases above Rupees ten lakh. High Courts and Supreme Courts, however, have jurisdiction under Constitution Articles 226 and 227.

➤ Recovery Procedure:

1. Section 25 deals with modes of recovery of debts.

It provides that Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely: –

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant.

2. Section 26 deals with validity of certificate and amendment thereof. It states that –

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

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

to the Recovery Officer.

(3) The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or canceling a certificate or any correction made by him under sub-section (2).

3. Section 27 deals with stay of proceedings under certificate and amendment or withdrawal thereof.

It provides that –

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

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

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

(4) Where a certificate for the recovery of debt has been received by the Recovery Officer and subsequently the amount of the outstanding demands is reduced 1[or enhanced] as a result of an appeal, the Presiding Officer shall, when the order which was the subject-matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

4. Section 28 deals with other modes of recovery. It states that –

(1) Where a certificate has been issued to the Recovery Officer under sub-section (7) of section 19, the Recovery Officer may, without prejudice to the modes of recovery specified in section 25, recover the amount of debt by any one or more of the modes provided under this section.

(2) If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Recovery Officer may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the defendant or to any person who holds or may subsequently hold money for or on account of the defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount.

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

(iii) A copy of the notice shall be forwarded to the defendant at his last address known to the Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Recovery Officer.

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

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

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

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

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

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

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realization of the amount as if it were a debt due from him, in the manner provided in sections 25, 26 and 27 and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 25.

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

(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets. (5) The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income-Tax Act, 1961 (43 of 1961).

5. Section 30 deals with appeal against the order of Recovery Officer. It provides that –

(1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive).

➤ **Special features of DRT:**

The provisions of this Act have overriding effect when there is inconsistency with any other law or in any instrument by virtue of any other law for the time being in force.

➤ **Case laws:**

DRT is a special Act for recovery of debt due to banks and financial institutions. DRT has overriding effect over the provisions of Companies Act, 1956, hence leave of the company court is not required even if the company is under winding up proceedings (Allahabad Bank vs Canara Bank AIR 2000 SC 1535) Money realized under DRT Act and distribution between bank and other secured creditors, in cases where winding up proceedings are pending in company court, priority of secured creditors is subject to provisions of 529 A of Companies Act (as per the said section, priority of secured creditors and workman over other dues and distribution inter se between secured creditors and workmen should be pari-pasu).

Lok Adalats are organized under the Legal Services Authorities Act, 1987. They are intended to bring about a compromise or settlement in respect of any dispute or potential dispute. Lok Adalats derive jurisdiction by consent or when the court is satisfied that the dispute between the parties could be settled at Lok Adalats. It should be guided by the principles of justice, equity, fair play and other legal principles. In case of settlement, the Award should be binding on the parties to the dispute. No appeal should lie in any court against the Award. Currently, Lok Adalats organised by civil courts to effect a compromise between disputing parties in matters pending before any court can handle cases up to a ceiling of ` 20 lakh. **SARFAESI ACT, 2002**

❖ **SARFAESI Act**

The objective of enactment of the SARFAESI ACT was to regulate securitization and reconstruction of financial assets and the enforcement of security interest and for the matters connected therewith or incidental thereto.

➤ **SARFAESI Act - Important Aspects**

1. This Act is popularly called as Securitization Act
2. This Act empowers the banks and financial institutions to recover their dues in Non- Performing Asset (NPA) accounts, without the intervention of a court

3. This Act also empowers the banks and financial institutions to issue notice for recovery from the defaulting borrowers and guarantors, calling upon them to discharge the dues in full within 60 days

4. In case the borrower and/or guarantor fails to comply with the 60 days' notice issued by the bank or financial institution in repayment of full dues, then the bank and/or financial institution can:

(a) Take the possession or the management of secured assets of the borrower, and also can transfer the same by way of lease, assignment or sale for realizing the secured assets without the intervention of a court/DRT

(b) Appoint any person to manage the secured assets which have been taken over by the secured creditor (bank)

(c) Also instruct at any time by a notice in writing to a person

1) who holds secured assets of the borrower

2) (ii) from whom any money due or becoming due to the borrower

3) to pay such money to the secured creditor (bank)

➤ **Some important terms covered under the SARFAESI Act**

(1) Bank:- All the banking companies, Nationalised banks, the State Bank of India and its subsidiary banks, Regional Rural Banks, co-operative banks etc.

(2) Borrower: (i) any person who has availed financial assistance from a bank and/or financial institution

(ii) any person who has given guarantee

(iii) any person who has created any mortgage or pledge as a security for the financial assistance granted by any bank or financial institution

(iv) any person who becomes the borrower of a securitization company or reconstruction company, because the company has acquired any interest or right of any bank or financial institution, on account of financial assistance granted to a borrower

(3) Central Registry:- The register office set up by the Central Government for the purpose of registration of all the transactions of asset securitization, reconstruction and transactions of creation of security interests. The registration system will operate on a priority of registration basis, i.e., 'first come first served basis' the first person who registers gets priority over the persons who registers at a later date.

(4) Financial assistance: Whenever any bank or financial institution allows a borrower;

(i) to avail of a loan or advance

(ii) makes subscription of debenture or bonds

- (iii) issues a letter of credit
- (iv) issues letter of credit
- (v) extends any other credit facility, it is called financial assistance.

The Act covers;

- Any financial assistance which is due (principle debt or any other amount payable)
- The right of security enforcement is for a default committed by the borrower, and the creditor is a secured creditor. In other words, any unsecured creditor has no right under this Act
- The debt should be classified by the bank as Non- Performing Asset

(5) Financial Asset:- Financial asset means debt or receivables and includes:

- (a) any debt or receivable secured by mortgage of or charge in immovable property or
- (b) a claim to any debt or receivables or part thereof whether secured or unsecured or
- (c) any charges like a mortgage, hypothecation or pledge of moveable property or
- (d) any right or interest in the security, whether full or part, securing debt
- (e) any beneficial interest in any movable or immovable property or in debt, receivables whether is existing, future, accruing, conditional or contingent or
- (f) any other financial assistance

(6) Qualified Institutional Buyer:- Qualified Institutional Buyer means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made there under, or any other body corporate as may be specified by the Board;

The Act is applicable only in case of a Non Performing Asset (NPA) of a borrower classified by a bank or financial institution as sub-standard, doubtful or a loss asset as per the RBI's guidelines.

The term 'hypothecation' is defined under this Act as a charge in or upon any movable property (existing or future) created by a borrower in favour of a secured creditor.

Reconstruction company formed for the purpose of asset reconstruction and registered under the Companies Act, 1956 is called Reconstruction company.

The Act covers three important aspects viz.,

- (i) Securitization
- (ii) Reconstruction of Financial assets and
- (iii) Enforcement of security interest

❖ **Securitization**

Securitization is the process of acquisition of financial asset by the securitization or reconstruction company from the lender (bank or financial institution) The reconstruction or securitization company may be raising funds for acquisition of financial asset from the qualified institutional buyers by issue of security receipts representing undivided interest in the financial assets or otherwise.

➤ **Security Receipt:**

A receipt or another security is issued by a securitization company or reconstruction company to any qualified institutional buyer. The receipt is an evidence of purchase or acquisition by the holder thereof of an undivided right, title or interest in the financial asset involved in securitization is called the security receipt. The security receipts are transferable in the market. SARFAESI Act made the loans secured by mortgage or other charges transferable.

➤ **Asset Reconstruction Company**

An asset reconstruction company's role is to takeover loans or advances from the bank or financial institution for the purpose of recovery. In other words any securitization company or reconstruction company acquires any right or interest of any bank or financial institution, in any financial assistance for the purpose of realization of such financial assistance it is called as asset reconstruction.

On acquisition of a financial asset, the securitization or reconstruction company becomes the owner of the financial asset and steps into the shoes of the lender bank or financial institution. This acquisition can also be said as a sale of asset without recourse to the bank or financial institution. The regulatory authority for all securitization or reconstruction companies is the Reserve Bank of India. It is a company registered under the Companies Act,1956 for the purpose of securitization and it also requires a registration from the RBI as per the SARFAESI Act.

➤ **Enforcement of Security Interest**

The 'Enforcement of security interest' is important for recovery of the bank's bad loans. The special feature of the Act is that the security interest can be enforced without intervention of the courts, subject to certain procedures to

be followed, like 60 days notice has to be served by the bank on the borrower with a request to discharge the loan liability. In case If borrower fails to discharge the liability, secured creditor can take possession of secured asset or other actions as per the provisions of the Act.

➤ **Security Interest:**

Any right, title and interest of any kind of the property created in favour of any secured creditor is called as security interest. It includes any secured creditor and is called as security interest. Whenever any lender takes any security from the borrower the lender gets interest in that security.

While taking possession of the asset various precautions are required to be taken and if required the help of the Chief Metropolitan Magistrate or District Magistrate can be taken.

➤ **Special features:**

Under certain circumstances properties cannot be attached, such as,

(i) any security interest securing repayment of any financial assistance not exceeding `1 lakh.

(ii) Security interest not registered under this Act.

(iii) Any security interest created in agricultural land.

(iv) A pledge of movables as per Section 172 of the Indian Contract Act.

No civil court has any jurisdiction under this Act. The Indian Limitation Act, 1963 is applicable to this Act.

➤ **Central Registry**

The Central registry is set up for registration of securitization and reconstruction transaction and creation of security interest. Registration under other Acts are like;

(a) Registration Act, 1908

(b) Companies Act, 2013

(c) Patents Act, 1970

(d) Motor Vehicles Act, 1988. The registration under the SARFAESI Act is in addition to the respective registrations required in the above mentioned acts and/or any other Act.

The following items require registration under the SARFAESI Act:

1. Securitization of financial assets

2. Reconstruction of financial assets

3. Creation of security interests

The central registry record can be kept fully or partly on electronic form

Filing of details of securitization, reconstruction, creation of security interests is to be filed with the central registrar.

The details in the prescribed form should be filed within thirty days after the date of transaction or the creation of security, by the securitization company, or the reconstruction company or the secured creditor. The prescribed fees are applicable for registration. The delay if any can be condoned by the central registrar for a period of next thirty days after the first thirty days prescribed subject to payment of fees as required. In case of modification of details registered with the central registrar, the modification also needs to be filed before the central registrar by the securitization company, or the reconstruction company or the secured creditor. The time period for modification is also like that of registration, i.e., the modification will have to be filed within thirty days in the prescribed forms with prescribed fees. The delay if any can be condoned by the central registrar for a period of next thirty days after the first thirty days prescribed subject to payment of fees as required.

The security interest registered with the central registrar is required to be satisfied on the payment of full amount by the borrower. The securitization company, or the reconstruction company or the secured creditor as the case may should report the satisfaction, within thirty days of payment in full or satisfaction of the charge. On receipt of the satisfaction charge the central registrar is required to cause a notice to be issued to the securitization company, or the reconstruction company or the secured creditor, calling upon to show cause within a period of fourteen days as to why the payment or satisfaction should not be recorded as intimated. If no cause is shown as required then the central registrar has to order that the memorandum of satisfaction should be entered in the central register. If any cause is shown accordingly a noting is recorded in the central register and should inform to the borrower accordingly.

➤ **Taking possession of property mortgaged / hypothecated to banks**

In a recent case Supreme Court has observed that we are governed by rule of law in the country and the recovery of loans or seizure of vehicles could be done only through legal means. In this connection it may be mentioned that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Security Interest (Enforcement) Rules, 2002 framed there under have laid down well

defined procedures not only for enforcing security interest but also for auctioning the movable and immovable property after enforcing the security interest. It is, therefore, desirable that banks rely only on legal remedies available under the relevant statutes which allow the banks to enforce the security interest without intervention of the Courts.

Where banks have incorporated a re-possession clause in the contract with the borrower and rely on such repossession clause for enforcing their rights, they should ensure that such repossession clause is legally valid, is clearly brought to the notice of the borrower at the time of execution of the contract, and the contract contains terms and conditions regarding

- (a) notice period to be given to the customers before taking possession
 - (b) the procedure which the bank would follow for taking possession of the property and
 - (c) the procedure which the bank would follow for sale / auction of property.
- This is expected to ensure that there is adequate upfront transparency and the bank is effectively addressing its legal and reputation risks.

➤ **Section 31 deals with provisions of this Act not to apply in certain cases. It provides that the provisions of this Act shall not apply to –**

- (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872; or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);
- (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);
- (g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);
- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- (i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent of the principal amount and interest thereon.

LENDERS LIABILITY ACT

In India, the SARFAESI Act. was enacted in 2002. On the basis of the recommendations of the working group on Lenders' Liability Laws constituted by the Government of India, Reserve Bank of India had finalized a set of codes of conduct called 'the Fair Practice Code for Lenders' and advised banks to adopt the guidelines. All the banks have formulated their own set of Fair Practice Codes as per the guidelines and implemented it from 1st November, 2003.

➤ Some of the important features of Lenders Liability Act are:

Banks and financial institutions should give acknowledgment for receipt of all loan applications. The loan applications should scrutinize the loan applications within a reasonable period of time. Loan applications in respect of priority sector and advances up to ` 2 lakhs should be comprehensive.

Lenders should ensure that the credit proposal is properly appraised after assessing the creditworthiness of the applicants. They should not use margin and security stipulation as a substitute for the due diligence on credit worthiness and other terms and conditions. The lender should inform to the borrower the sanction of credit limit in writing along with the terms and conditions thereof and keep the borrower's acceptance of the credit limits and terms and condition on record. Duly signed acceptance letter should form part of the collateral security. In case of consortium advances, the participating lenders should evolve procedures to complete appraisal of proposals in the time-bound manner to the extent feasible and communicate their decision on financing or otherwise within a reasonable time. Lenders should ensure timely disbursement of loans sanctioned in conformity with the terms and conditions governing such sanction. Post disbursement supervision by lenders, particularly in respect of loans up to ` 2 lakhs, should be constructive with a view to taking care of any 'lender-related; genuine difficulty that the borrower may face, Lenders should release all securities on receiving payment of loan or realization of loan, subject to any legitimate right of lien for any other claim lenders may have against the borrowers. Lenders should not interfere in the affairs of the borrowers except for what is allowed as per the terms and conditions of the loan sanction documents. In the matter of recovery of loans, lenders should not resort to undue harassment

Apart from the Fair Practices Code, banks should also have proper system for grievance redressal system, Apart from the above code, banks have set up codes for Bankers' Fair Practices Code, Fair Practices Code for Credit

Card Operations, Model Code for Collection of Dues and Repossession of Security etc.,

❖ **Banking Ombudsman**

Banking Ombudsman Service is a grievance redressal system. This service is available for complaints against a bank's deficiency of service. A bank's customer can submit complaint against the deficiency in the service of the bank's branch and bank as applicable, and if he does not receive a satisfactory response from the bank, he can approach Banking Ombudsman for further action. Banking Ombudsman is appointed by RBI under Banking Ombudsman Scheme, 2006. RBI as per Section 35A of the Banking Regulation Act, 1949 introduced the Banking Ombudsman Scheme with effect from 1995.

➤ **Important features of Banking Ombudsman**

The Banking Ombudsman is a senior official appointed by the Reserve Bank of India to redress customer complaints against deficiency in certain banking services. All Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme.

Some of the deficiency in banking services including internet banking, covered under the Banking Ombudsman Scheme are:

- deficiency in customer service like non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;
- delayed or non- payment of inward remittance, delay in issuance of drafts,
- non-adherence to prescribed working hours;
- refusal to open deposit accounts without any valid reason for refusal;
- levying of charges without adequate prior notice to the customer;
- forced closure of deposit accounts without due notice or without sufficient reason;
- refusal to close or delay in closing the accounts; etc.,
- non-adherence to the fair practices code as adopted by the bank or non-adherence to the provisions of the Code of Bank's Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank ;
- non-observance of Reserve Bank guidelines on engagement of recovery agents by banks; and any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.

➤ **As regards loans and advances, a customer can also lodge a complaint on the following grounds of deficiency in service with respect to loans and advances:-**

- Non-observance of Reserve Bank Directives on interest rates; delays in sanction, disbursement or nonobservance of prescribed time schedule for disposal of loan applications;
- non-acceptance of application for loans without furnishing valid reasons to the applicant; non-adherence to provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be.,

One can file a complaint before the Banking Ombudsman if the reply is not received from the bank within a period of one month after the bank concerned has received one's representation, or the bank rejects the complaint, or if the complainant is not satisfied with the reply given by the bank.

➤ **However a complaint will not be considered by the Ombudsman in the following situations:**

- (i) The person has not approached his bank for redressal of his grievance first
 - (ii) The subject matter of the complaint is pending for disposal or has already been dealt with at any other forum like court of law, consumer court etc.
 - (iii) The institution complained against is not covered under the scheme
 - (iv) The subject matter of the complaint is not within the ambit of the Banking Ombudsman
- A person can file a complaint with the Banking Ombudsman simply by writing on a plain paper. A person can also file it on-line or by sending an email to the Banking Ombudsman. For complaints relating to credit cards and other types of services with centralized operations, complaints may be filed before the Banking Ombudsman within whose territorial jurisdiction the billing address of the customer is located.

The complaint can also be filed by one's authorized representative (other than an advocate).

The amount, if any, to be paid by the bank to the complainant by way of compensation for any loss suffered by the complainant is limited to the amount arising directly out of the act or omission of the bank or ` 10 lakhs, whichever is lower. The Banking Ombudsman may award compensation not exceeding ` 1 lakh to the complainant only in the case of complaints relating to credit card operations for mental agony and harassment. The Banking Ombudsman will take into account the loss of the complainant's time, expenses incurred by the complainant, harassment and mental suffering by the while passing such award.

➤ **The Banking Ombudsman may reject a complaint at any stage if it appears to him that a complaint made to him is:**

- (i) not on the grounds of complaint referred to above compensation sought from the Banking Ombudsman is beyond 10 lakh
- (ii) in the opinion of the Banking Ombudsman there is no loss or damage or inconvenience caused to the complainant.

If one is aggrieved by the decision, he/she may, within 30 days of the date of receipt of the award, appeal against the award before the appellate authority. The appellate authority may, if he/ she is satisfied that the applicant had sufficient cause for not making an application for appeal within time, also allow a further period not exceeding 30 days.

THE CONSUMER PROTECTION ACT, 1986

To protect the interests of the consumers, the Consumer Protection Act was enacted. The Act extends to the whole of India except the State of Jammu and Kashmir. The Act covers all goods and services, except goods for resale or for commercial purpose and services rendered free of charge and a contract of personal service.

➤ **The basic rights of consumers that are sought to be promoted and protected under the Consumer Protection Act, 1986 are:**

- a) the right to be protected against marketing of goods and services which are hazardous to life and property;
- b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices;
- c) the right to be assured, wherever possible, access to variety of goods and services at competitive prices;
- d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and right to consumer education.

➤ **Consumer means any person who –**

(a) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the

approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(b) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose. [Section 2(1)(d)]. It has been clarified that the term commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment.

➤ **Therefore, to be a 'consumer' under the Act:**

(i) the goods or services must have been purchased or hired or availed of for consideration which has been paid in full or in part or under any system of deferred payment, i.e. in respect of hire purchase transactions;

(ii) goods purchased should not be meant for re-sale or for a commercial purpose. Goods purchased by a dealer in the ordinary course of his business and those which are in the course of his business to supply would be deemed to be for 're-sale; and

(iii) in addition to the purchaser(s) of goods, or hirer(s) or users of services, any beneficiary of such services, using the goods/services with the approval of the purchaser or hirer or user would also be deemed a 'consumer under the Act.

The complaint may be made by the complainant which includes a consumer or any voluntary consumer association

registered under the Companies Act, 1956 or any other law or the Central or State Government or one or more consumers, having the same interest and in case of death of a consumer his/ her legal heirs or representative. The Act is for speedy disposal of the redressal of consumer disputes.

Consumer councils are established to promote and protect the rights of consumers. The Central Council has the jurisdiction for the entire country,

followed by the State Council for each state and District Council for each district.

The Councils at the State level is headed by the chairman of the council, i.e., the Minister-in-Charge of the Consumer Affairs in the State Government.

The consumers' complaints are dealt by District Forum, State and National Commission. District forum and State Commission are established by the State Governments, and the National Commission established by Central Government. District Forum has powers to deal with cases up to ` 20 lakhs. The State Commission deals with complaints exceeding value of ` 20 lakh and below ` One crore and appeals against the orders of any District forum within the State. The cases exceeding ` One crore would be handled by the National Commission. They also deal with appeals against the order of any State Commission.

Complaints should be in a prescribed manner, with full details, evidence and applicable fee. Supporting affidavit is required. Admissibility of complaint is to be decided within twenty one days. Similarly, other procedures and requirements as per the Act which are in force, would be applicable.

➤ CASE STUDY

Collusion between Bank Officials and Builders – SARFAESI Act

It is strongly believed that the implementation of the provisions of the SARFAESI Act, 2002 for making a proper balance between the objects and the interests of the borrower is a very complicated exercise. There are so many judgments on the provisions of the SARFAESI Act, 2002 and still certain areas remained complicated. A typical case of the recent past and its facts are as follows:

Facts:

Mr.A is a Senior Software Engineer working in a reputed Company and by availing a loan from "L" Bank; he has purchased a building property in a City (hereinafter referred to as "first loan"). Mr.A was paying all his installments to the Bank in respect of his first loan. Thereafter a builder has approached Mr.A to purchase another property through the Bank "L". Though the documents were presented by the builder to Mr.A, Mr.A has trusted the Bank Officials and requested the Bank officials to look into all the legalities and the details about the property. Mr.A was assured by the Bank Officials that he can buy the property. After having the specific assurance from the officials of the Bank "L", Mr.A has purchased another property in the City through the Bank "L" (hereinafter referred to as the 'second loan'). While Mr.A was paying all the installments in respect of the two loans, he has received a notice from

a third person in respect of his second property and he was shocked to know that his second property doesn't actually belong to the builder. Apart from the loan amount, Mr.A has also paid substantial amount of money to the 'builder'. Though Mr.A was not used to do enquiries and not faced with any litigation in life, Mr.A is forced to do his independent enquiry regarding the second property and he finally found that he was cheated by the Bank Officials and the Builder. Mr.A found that the Bank Officials of "L" has actually helped the builder knowing fully that the builder can not sell the property and do not possess any title over the property. Immediately after the occurrence of the fraud, Mr.A has approached some professionals to file a criminal case against the Bank Officials and the real estate people, but, soon he has realized the difficulties in approaching the authorities and getting justice from the Courts. Mr.A has also spent substantial amount of money on the litigation to bring the fraudulent officials of "L" and the builders to book. While the process of pursuing a criminal case against the Bank Officials of "L" and the builder was going on, surprisingly Mr.A has received a notice from "L" bank asking to repay the loan amount in respect of the Second Loan and he has also seen a demand in the demand notice from the Bank that if Mr.A does not pay the Second Loan Amount, then, they proceed against the First Loan Property. Mr.A is literally shocked as to why he has to pay the Second Loan Amount as he was literally cheated by the Bank Officials itself and he is also shocked as to how the Bank can proceed against his First House Property as he was paying all the installments in respect of his First Loan. Mr.A expressing an opinion that all his hard earned money is invested in the property and he can not venture loosing the property. Mr.A has come to the stage that only suicide will be a solution for him under these circumstances.

Questions

- 1) What precautions and safeguards Mr A should have taken before purchasing second loan property?
- 2) Can Bank L legally proceed against the first loan property of Mr A when there is no default on his part in repayment of loan installments of that property ,for the default in case of second property loan?
- 3) Is Bank L responsible to indemnify Mr A for the fraud committed by its official in case of second loan?
- 4) How can Bank L realize the second loan amount?
- 5) What the legal remedies are available to Mr A for the fraud committed to him by Bank official in collusion with the builders and also against the demand notice of the Bank L to proceed against his first loan property?

Important Questions

1. Explain the Provisions of Bankers Book Evidence Act.
2. Define financial institutions ? Explain the Features of Recovery of Debts Due to Banks and Financial Institutions Act, 1993
3. Write the detailed note on TDS Banking Cash Transaction Tax Service Tax.
4. Write the detailed note on Laws of Limitations
5. Examine the grounds under which the banking Ombudsman may reject the complaint.
6. Explain the objects and features of Securitisation Act, 2002.
7. Examine the advantages of Securitisation Act to the banker
8. Write the note on Banking Ombudsman Lok Adalats,
9. Write the note on Lender's Liability Act.

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