

Content Topic

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UNIT 1

RBI Act, 1935 and Banking Regulation Act, 1949

Introduction

The Reserve Bank of India, the nation's central bank, began operations on April 01, 1935. It was established with the objective of ensuring monetary stability and operating the currency and credit system of the country to its advantage.

Its functions comprise monetary management, foreign exchange and reserves management, government debt management, financial regulation and supervision, apart from currency management and acting as banker to the banks and to the Government. In addition, from the beginning, the Reserve Bank has played an active developmental role, particularly for the agriculture and rural sectors. Over the years, these functions have evolved in tandem with national and global developments.

The origins of the Reserve Bank of India can be traced to 1926, when the Royal Commission on Indian Currency and Finance – also known as the Hilton-Young Commission – recommended the creation of a central bank for India to separate the control of currency and credit from the Government and to augment banking facilities throughout the country. The Reserve Bank of India Act of 1934 established the Reserve Bank and set in motion a series of actions culminating in the start of operations in 1935. Since then, the Reserve Bank's role and functions have undergone numerous changes, as the nature of the Indian economy and financial sector changed.

Origins of the Reserve Bank of India

- 1926: The Royal Commission on Indian Currency and Finance recommended creation of a central bank for India.
- 1927: A bill to give effect to the above recommendation was introduced in the Legislative Assembly, but was later withdrawn due to lack of agreement among various sections of people.
- 1933: The White Paper on Indian Constitutional Reforms recommended the creation of a Reserve Bank. A fresh bill was introduced in the Legislative Assembly. 1934: The Bill was passed and received the Governor General's assent
- 1935: The Reserve Bank commenced operations as India's central bank on April 1 as a private shareholders' bank with a paid up capital of rupees five crores (rupees fifty million).
- 1942: The Reserve Bank ceased to be the currency issuing authority of Burma (now Myanmar).
- 1947: The Reserve Bank stopped acting as banker to the Government of Burma.
- 1948: The Reserve Bank stopped rendering central banking services to Pakistan.

- 1949: The Government of India nationalized the Reserve Bank under the Reserve Bank (Transfer of Public Ownership) Act, 1948.

Starting as a private shareholders' bank, the Reserve Bank was nationalized in 1949. It then assumed the responsibility to meet the aspirations of a newly independent country and its people. The Reserve Bank's nationalization aimed at achieving coordination between the policies of the government and those of the central bank.

Functions of the Reserve Bank

The functions of the Reserve Bank today can be categorized as follows:

- Monetary policy
- Regulation and supervision of the banking and non-banking financial institutions, including credit information companies
- Regulation of money, forex and government securities markets as also certain financial derivatives
- Debt and cash management for Central and State Governments
- Management of foreign exchange reserves
- Foreign exchange management—current and capital account management
- Banker to banks
- Banker to the Central and State Governments
- Oversight of the payment and settlement systems
- Currency management
- Developmental role
- Research and statistics

The Preamble to the Reserve Bank of India Act, 1934 (the Act), under which it was constituted, specifies its objective as “to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage”.

The objectives outlined in the Preamble hold good even after 75 years.

As evident from the multifaceted functions that the Reserve Bank performs today, its role and priorities have, in the span of 75 years, changed in tandem with changing national priorities and global developments. Essentially, the Reserve Bank has demonstrated dynamism and flexibility to meet the requirements of an evolving economy.

A core function of the Reserve Bank in the last 75 years has been the formulation and implementation of monetary policy with the objectives of maintaining price stability and ensuring adequate flow of credit to productive sectors of the economy. To these was added, in more recent times, the goal of maintaining financial stability. The objective of maintaining financial stability has spanned its role from external account management to

oversight of banks and non-banking financial institutions as also of money, government securities and foreign exchange markets.

The Reserve Bank designs and implements the regulatory policy framework for banking and non-banking financial institutions with the aim of providing people access to the banking system, protecting depositors' interest, and maintaining the overall health of the financial system. Its function of regulating the commercial banking sector, which emerged with the enactment of the Banking Regulation Act, 1949, has over time, expanded to cover other entities. Thus, amendments to the Banking Regulation Act, 1949 brought cooperative banks and regional rural banks under the Reserve Bank's jurisdiction, while amendments to the Reserve Bank of India Act saw development finance institutions, non-banking financial companies and primary dealers coming under its regulation, as these entities became important players in the financial system and markets.

The Reserve Bank, as the custodian of the country's foreign exchange reserves, is vested with the responsibility of managing their investment. The legal provisions governing management of foreign exchange reserves are laid down in the Reserve Bank of India Act, 1934.

The Reserve Bank's reserves management function has in recent years grown both in terms of importance and sophistication for two main reasons. First, the share of foreign currency assets in the balance sheet of the Reserve Bank has substantially increased. Second, with the increased volatility in exchange and interest rates in the global market, the task of preserving the value of reserves and obtaining a reasonable return on them has become challenging.

The basic parameters of the Reserve Bank's policies for foreign exchange reserves management are safety, liquidity and returns.

Within this framework, the Reserve Bank focuses on:

- a) Maintaining market's confidence in monetary and exchange rate policies.
- b) Enhancing the Reserve Bank's intervention capacity to stabilize foreign exchange markets.
- c) Limiting external vulnerability by maintaining foreign currency liquidity to absorb shocks during times of crisis, including national disasters or emergencies.
- d) Providing confidence to the markets that external obligations can always be met, thus reducing the costs at which foreign exchange resources are available to market participants.
- e) Adding to the comfort of market participants by demonstrating the backing of domestic currency by external assets.

Investment of Reserves:

The Reserve Bank of India Act permits the Reserve Bank to invest the reserves in the following types of instruments:

- 1) Deposits with Bank for International Settlements and other central banks
- 2) Deposits with foreign commercial banks
- 3) Debt instruments representing sovereign or sovereign-guaranteed liability of not more than 10 years of residual maturity
- 4) Other instruments and institutions as approved by the Central Board of the Reserve Bank in accordance with the provisions of the Act
- 5) Certain types of derivatives

While safety and liquidity continue to be the twin-pillars of reserves management, return optimization has become an embedded strategy within this framework. The Reserve Bank has framed policy guidelines stipulating stringent eligibility criteria for issuers, counterparties, and investments to be made with them to enhance the safety and liquidity of reserves. The Reserve Bank, in consultation with the Government, continuously reviews the reserves management strategies.

Deployment of Reserves

The foreign exchange reserves include foreign currency assets (FCA), Special Drawing Rights (SDRs) and gold. SDRs are held by the Government of India.

The foreign currency assets are managed following the principles of portfolio management. In deploying reserves, the Reserve Bank pays close attention to currency Composition, interest rate risk and liquidity needs. All foreign currency assets are invested in assets of top quality and a good proportion is convertible into cash at short notice. The counterparties with whom deals are conducted are also subject to a rigorous selection process. In assessing the returns from deployment, the total return (both interest and capital gains) is taken into consideration. One crucial area in the process of investment of the foreign currency assets in the overseas markets relates to the risks involved in the process. While there is no set formula to meet all situations, the Reserve Bank follows the accepted portfolio management principles for risk management.

The traditional approach of assessing reserve adequacy in terms of import cover has been widened to include a number of parameters about the size, composition, and risk profiles of various types of capital flows. The Reserve Bank also looks at the types of external shocks to which the economy is potentially vulnerable. The objective is to ensure that the quantum of reserves is in line with the growth potential of the economy, the size of risk-adjusted capital flows and national security requirements.

LEGAL & REGULATORY ASPECTS OF BANKING

Functions of RBI: RBI is an apex banking institution of the country. It carries on several functions as a central bank. According to RBI Act, 1934, "the principal function of RBI is to issue notes and maintain reserves, currency and credit to maintain monetary stability in the general interest of the nation."

As a central banking authority RBI carries on the following functions:

1. RBI regulates issue of bank notes above one rupee denomination
2. Undertakes distribution of all currency notes and coins on behalf of the government
3. Acts as the banker to the Government of India and the State governments, Commercial and

Cooperative banks

4. Formulates and administers the monetary policy
5. Maintain exchange value of rupee
6. Represent India at the International Monetary Fund (IMF)
7. RBI acts as a banker for all the commercial banks. All scheduled banks come under the direct control of RBI. All commercial as well as schedule bank has to keep a minimum reserve with the RBI. They have to submit weekly reports to RBI about their transactions. By performing 3 functions, the RBI helps the member banks significantly. They are given below such as:

- It acts as the lender of the last resort.
- It is the custodian of cash reserves of commercial banks.
- It clears, transfers the transaction. It acts as the central clearing house.

8. Regulation of banking system

9. Credit Control

Organization

The affairs of the RBI are controlled by the Central Board of Directors, consisting of the following members:

- 1) One Governor and not more than four Deputy Governors appointed by the Central Government for 5 years.
- 2) Four Directors nominated by the Central Government. One each from local boards. The term of their office is related to their membership in the local boards.
- 3) Three other directors, nominated by the central government. These directors hold office for four years and there is a provision in the Act for their retirement by rotation.
- 4) One government official

Besides the control board there are local boards for four regional areas of the country with headquarters at Mumbai, Kolkata, Chennai and New Delhi. Local Board consists of 5 members. These members are appointed for period of 4 years. They must represent as far as 18 possible territorial and economic interests of co-operative and indigenous banks.

The internal organizational set up of the Bank has been modified and expanded from time to time in order to cope with the increasing volume and range of Bank's activities. In order to perform its various functions, the Bank has been divided and sub divided into a large number of departments. Apart from banking and issue departments, there are at present 20 departments and three training establishments at the central office of the bank.

Functions

The Reserve Bank of India Act of 1934 entrust all the important functions of a central bank the Reserve Bank of India.

1. Issuing Authority: Under Section 22 of the Reserve Bank of India Act, the Bank has the sole right or authority or monopoly of issuing currency notes other than one rupee notes and coins and coins of smaller denominations. Although one rupee coins and notes and coins of smaller denominations are issued by the Government of India, but put into circulation only through RBI. The currency notes issued by the Bank are legal tender everywhere in India. Apart from issuing currency and withdrawing it from circulation, it also exchanges notes and coins of one denomination into those of other denominations as demanded by public.

RBI also makes adequate arrangements for holding and distributing the currency notes and coins which ensure its complete and uniform control over the credit and currency system of the economy. RBI issue notes against the security of gold coins and gold bullion, foreign securities, government securities and bills of exchange and promissory notes. The affairs of the bank relating to note issue and its general banking business are conducted through two separate departments, the Issue and Banking Department.

The Issue Department is liable for the aggregate value of currency notes of Government of India and the currency notes of the Reserve Bank in circulation and it maintains eligible assets for equivalent value. It is responsible for getting its periodical requirements of notes printed from the currency presses of the Government of India, distribution of currency among the public and withdrawal of unserviceable notes and coins from circulation. The Issue Department deals directly with the public in exchange of currency for coins and vice versa and exchange of notes of one denomination for another.

The expansion and contraction of currency in circulation is affected through the Banking Department. Cash deposits and withdrawals by scheduled banks are handled by the Banking Department. The Banking Department replenishes its currency when necessary from the Issue Department against transfer of eligible assets. Similarly, surplus cash is returned to the Issue Department in exchange for equivalent assets.

Originally, the assets of the Issue Department were to consist of not less than two-fifths of gold coin, gold bullion or sterling securities provided the amount of gold was not less than Rs. 40 crores in value. The remaining three-fifths of the assets might be held in rupee coins, Government of India rupee securities, eligible bills of exchange and promissory notes payable in India. Due to the exigencies of the Second World War and the post-war period, these provisions were considerably modified. Since 1957, the Reserve Bank of India is required to maintain gold and foreign exchange reserves of Ra. 200 crores, of which at least Rs. 115 crores should be in gold. The system as it exists today is known as the minimum reserve system.

2. Banker of Government: The second important function of the Reserve Bank of India is to act as banker to the Government of India statutorily and to state governments by virtue of agreements entered into with them. The Reserve Bank is agent of Central Government and of all State Governments in India excepting that of Jammu and Kashmir. The Reserve Bank has the obligation to transact Government business, via. To keep the cash balances as deposits free of interest, to receive and to make payments on behalf of the Government and to carry out their exchange remittances and other banking operations. It is not entitled to any remuneration for these services.

In addition to these ordinary banking operations the Reserve Bank of India helps the Government - both the Union and the States to float new loans and to manage public debt. The RBI is entitled to charge a commission for these activities. Under public debt management the RBI manages deficit/ surplus in the central and state government by providing money to fill the gap between receipts and payments. It is done in the following ways:

1. For Central Government: The deficit/ surplus in the central government account with the RBI are managed by the creation/ cancellation of ad-hoc treasury bills which are held in the Issue

Department and hence the budget deficit/ surplus is monetized.

2. For State Government: The gap between receipts and payments of state governments is by 'ways and means advances'. These advances are of three types:

- Normal/ clean advances which are without any collateral security.
- Secured advances are against the pledge of the central government securities.
- Special advances are granted at the discretion of RBI.

The Bank makes ways and means advances to the Governments for 90 days. It makes loans and advances to the States and local authorities. In addition to ways and means advances, the state government also heavily use overdrafts from the RBI. RBI is involved in underwriting government securities. It acts as a principal and as an agent in securities market. It acts as adviser to the Government on all monetary and banking matters.

3. Bankers' Bank and Lender of the Last Resort or Father of Banks: The Reserve Bank of India acts as the bankers' bank. The RBI controls the volume of reserves of the banks and determines their deposit credit creation ability. The banks hold all/ a part of their reserves with the RBI and in times of need, they borrow from the RBI.

According to the provisions of the Banking Companies Act of 1949, every scheduled bank was required to maintain with the Reserve Bank a cash balance equivalent to 5% of its demand liabilities and 2 per cent of its time liabilities in India. By an amendment of 1962, the distinction between demand and time liabilities was abolished and banks have been asked to keep cash reserves equal to 3 per cent of their aggregate deposit liabilities. The minimum cash requirements can be changed by the Reserve Bank of India.

The scheduled banks can borrow from the Reserve Bank of India on the basis of eligible securities or get financial accommodation in times of need or stringency by rediscounting bills of exchange. Since commercial banks can always expect the Reserve Bank of India to come to their help in times of banking crisis the Reserve Bank becomes not only the banker's bank but also the lender of the last resort.

4. Controller of Credit: The Reserve Bank of India is the controller of credit i.e. it has the power to influence the volume of credit created by banks in India. It can do so through changing the Bank rate or through open market operations. According to the Banking Regulation Act of 1949, the Reserve Bank of India can ask any particular bank or the whole banking system not to lend to particular groups or persons on the basis of certain types of securities. Since 1956, selective controls of credit are increasingly being used by the Reserve Bank.

The Reserve Bank of India is armed with many more powers to control the Indian money market. Every bank has to get a licence from the Reserve Bank of India to do banking business within India, the licence can be cancelled by the Reserve Bank if certain stipulated conditions are not fulfilled. Every bank will have to get the permission of the Reserve Bank before it can open a new branch. Each scheduled bank must send weekly return to the Reserve Bank showing, in detail, its assets and liabilities. This power of the Bank to call for information is also intended to give it effective control of the credit system. The Reserve Bank has also the power to inspect the accounts of any commercial bank.

As supreme banking authority in the country, the Reserve Bank of India, therefore, has the following powers:

- a) It holds the cash reserves of all the scheduled banks.
- b) It controls the credit operations of banks through quantitative and qualitative controls.
- c) It controls the banking system through the system of licensing, inspection and calling for information.
- d) It acts as the lender of the last resort by providing rediscount facilities to scheduled banks.

5. Custodian of Foreign Reserves: The RBI maintains the external value of the rupee through the regulation of foreign exchange market coupled with domestic policies. In the external sector, the task of RBI has following dimensions:

- To administer 'foreign exchange control'.
- To choose the exchange rate system and fix or manage the exchange rate between the rupee and other currencies.
- To manage exchange reserves.
- To interact with monetary authorities of other countries and with the international financial institutions such as IMF and World Bank. The RBI administers the exchange control according to the Foreign Exchange Maintenance Act (FEMA) to primarily regulate the demand for foreign exchange within the limits of available supply. The controls are administered through the authorised foreign exchange dealers. In the pre-liberalisation era, the exchange rate of rupee was fixed in terms of 'basket of currencies'. But after the early nineties, as the rupee became fully convertible on current account, the rate has been market related. The controls on foreign exchange are being gradually relaxed. As the custodian of the foreign exchange reserves, the RBI also sees to the investment and utilization of foreign exchange reserves in the most advantageous manner.

The Reserve Bank of India has the responsibility to maintain the official rate of exchange. According to the

Reserve Bank of India Act of 1934, the Bank was required to buy and sell at fixed rates any amount of sterling in lots of not less than Rs. 10,000. The rate of exchange fixed was Re. 1 = sh. 6d. Since 1935 the Bank was able to maintain the exchange rate fixed at 1sh.6d. Though there were periods of extreme pressure in favor of or against the rupee. After India became a member of the International Monetary Fund in 1946, the Reserve Bank has the responsibility of maintaining fixed exchange rates with all other member countries of the I.M.F.

Besides maintaining the rate of exchange of the rupee, the Reserve Bank has to act as the custodian of India's reserve of international currencies. The vast sterling balances were acquired and managed by the Bank. Further, the RBI has the responsibility of administering the exchange controls of the country.

6. Supervisory Functions: To promote a sound and effective banking system, the RBI is vested with wide ranging powers to supervise and control banks. The main powers are:

- To issue licenses for the establishment of new banks.
- To issue licenses for setting up of bank branches.
- To prescribe for banks, the minimum requirements regarding capital and resources, the transfer of reserve fund and maintenance of cash reserve and other liquid assets.

- To inspect the organizational set up: branch expansion, mobilization of deposits, investments, credit portfolio management, region wise performance, profit planning, manpower planning, training and so on regarding banks.
- To investigate into complaints, irregularities and fraud in respect of banks.
- To check improper investments and injudicious advances by the banks.
- To control appointment, re-appointment, termination of chairman/ chief executive officer of private sector banks.
- To approve/ force amalgamation.

7. Promotional Functions: With economic growth assuming a new urgency since Independence, the range of the Reserve Bank's functions has steadily widened. The Bank now performs a variety of developmental and promotional functions, which, at one time, were regarded as outside the normal scope of central banking. The Reserve Bank was asked to promote banking habit, extend banking facilities to rural and semi-urban areas, and establish and promote new specialised financing agencies. Accordingly, the Reserve Bank has helped in the setting up of the IFCI and the SFC; it set up the Deposit Insurance Corporation in 1962, the Unit Trust of India in 1964, the Industrial Development Bank of India also in 1964, the Agricultural Refinance Corporation of India in 1963 and the Industrial Reconstruction Corporation of India in 1972. These institutions were set up directly or indirectly by the Reserve Bank to promote saving habit and to mobilise savings, and to provide industrial finance as well as agricultural finance.

As far back as 1935, the Reserve Bank of India set up the Agricultural Credit Department to provide agricultural credit. But only since 1951 the Bank's role in this field has become extremely important. The Bank has developed the co-operative credit movement to encourage saving, to eliminate moneylenders from the villages and to route its short term credit to agriculture. The RBI has set up the Agricultural Refinance and Development Corporation to provide long-term finance to farmers.

8. Monetary Planning and Control Functions: The RBI regulates the availability, cost and terms and conditions of credit in the market. It aims at regulating and controlling the money supply as per the requirements of the economy and the monetary policy.

Objectives of RBI:

RBI functions within the framework of a mixed economic system. Main objectives of RBI are:

- To maintain monetary stability so that the business and economic life can deliver welfare gains of a properly functioning mixed economy.
- To maintain financial stability so that the monetary stability can be safely pursued and economic units can conduct their business with confidence.
- To maintain stable payment system so that financial transactions can be safely and efficiently executed.

- To promote the development of financial infrastructure of markets and systems and to enable it to operate efficiently.
- To ensure that credit allocation by the financial system broadly reflects the national economic priorities.
- To regulate the overall volume of money and credit in the economy with a view to ensure a reasonable degree of price stability.
- To establish monetary relations with other countries of the world and international financial institutions.

Role of RBI in Economic Development

Reserve Bank of India or RBI happens to be the first and foremost monetary authority in the dominion of

India and with the exception of this attribute, it does act in the role of bank of the national and state governments. RBI is known to formulate, implement and keep tabs on the monetary policy and it also has to make certain the sufficient flow of credit to productive sectors.

In 1994, the finance minister said that if the government fails to keep control over its deficit the Reserve

Bank would be free to dump adhoc treasury bills on the market at the going rate of interest and making the government pay the market related interest on the outstanding debt. This means a rise in interest expenditure and a further rise in the fiscal deficit. But this does not mean that the Reserve bank of India is fully free in formulating and implementing monetary policy. There are two reasons for this. In the first place, the banking system has to adhere to the policy of mandated lending and the structure of administered interest rates; in the second place, there is not yet legislative backing for guaranteeing the independence of the Reserve Bank as in the case with the US Federal Reserve Board [the FED] and the West German Bundes Bank [BUBA].

After decades of resistance to international economic integration, India has recently made significant progress in liberalizing trade and access to foreign investment, beginning in 1993. These policy changes reflect widespread concern that Indians past inward orientation inhibited economic growth, especially in comparison with the developing countries of East Asia. The acceptance of economic liberalization and reform has allowed the relaxation of restrictions on foreign direct investment and inward portfolio capital flows. India retains tight controls on outward portfolio capital flows, restricting the access of residents to foreign capital markets and domestic markets in foreign currency-denominated securities. The relaxation of these controls and further liberalization of the capital account remain controversial policy issues for India. For convenience the role of RBI on the economy of India has been dealt under the three areas:

- a) RBI on Forex Reserves
- b) RBI on Corporate Debt Restructuring
- c) RBI on Banking

a) RBI on Forex Reserves

Foreign exchange reserves play an irreplaceable role in many emerging economies. The central, or reserve, bank creates and then uses domestic money to buy foreign exchange. If a central bank creates more domestic money, it can buy more foreign exchange. It does not have to pump iron to build reserves. It does not have to sweat it out. It has to merely pump domestic money into the domestic economy and coolly build foreign exchange reserves. The creation of foreign exchange reserves is wholly a white-collar job.

The Reserve Bank of India (RBI) undertook a review of the main policy and operational matters relating to management of the reserves, including transparency and disclosure and decided to compile and make public half-yearly reports on management of foreign exchange reserves for bringing about more transparency and also for enhancing the level of disclosure in this regard. These reports are being prepared with reference to positions as of 31st March and 30th September each year, with a time lag of about 3 months. The reports talk about the report is a compilation of quantitative information with regard to external reserves, such as, level of foreign exchange reserves, sources of accretion to foreign exchange reserves, external liabilities visà- vis foreign exchange reserves, prepayment/repayment of external debt, Financial Transaction Plan (FTP) of IMF, adequacy of reserves, etc.

Adequacy of Reserves: Adequacy of reserves has emerged as an important parameter in gauging its ability to absorb external shocks. With the changing profile of capital flows, the traditional approach of assessing reserve adequacy in terms of import cover has been broadened to include a number of parameters which take into account the size, composition and risk profiles of various types of capital flows as well as the types of external shocks to which the economy is vulnerable. The High Level Committee on Balance of Payments, which was chaired by Dr. C. Rangarajan, erstwhile Governor of Reserve Bank of India, had suggested that, while determining the adequacy of reserves, due attention should be paid to payment obligations, in addition to the traditional measure of import cover of 3 to 4 months.

In 1997, the Report of Committee on Capital Account Convertibility under the chairmanship of Shri S.S.Tarapore suggested four alternative measures of adequacy of reserves which, in addition to trade based indicators, also included money-based and debt-based indicators. Similar views have been held by the Committee on Fuller Capital Account Convertibility (Chairman: Shri S.S.Tarapore, July 2006). In the recent period, assessment of reserve adequacy has been influenced by the introduction of new measures.

One such measure requires that the usable foreign exchange reserves should exceed scheduled amortization of foreign currency debts (assuming no rollovers) during the following year. The other one is based on a "Liquidity at Risk" rule that takes into account the foreseeable risks that a country could face. This approach requires that a country's foreign exchange liquidity position could be calculated under a range of possible outcomes for relevant financial variables, such as, exchange rates, commodity prices, credit spreads etc.

Reserve Bank of India has done exercises based on intuition and risk models in order to estimate "Liquidity at Risk (LAR)" of the reserves. The traditional trade-based indicator of reserve adequacy, viz, import cover of reserves, which fell to a low of 3 weeks of imports at end-December 1990, rose to 11.5 months of imports at end-March 2002 and increased further to 14.2 months of imports or about five years of debt servicing at end-March 2003. At end-March 2004, the import cover of reserves was 16.9 months, which came down to 14.3 months as at end-March 2005 and further to 11.6 months as at end-March 2006. The import cover for reserves was 12.4 months at end-March 2007. The ratio of short-term debt to foreign exchange reserves declined from 146.5 per cent at end-March 1991 to 5.3 per cent as at end-March 2005, but increased slightly to 5.7 per cent as at end-March 2006 and further to 6.0 per cent at end-March 2007. The ratio of volatile capital flows (defined to include cumulative portfolio inflows and short-term debt) to reserves declined from 146.6 per cent as at end-March 1991 to 35.2 per cent as at end-March 2004. However, this ratio increased moderately to 36.9 per cent as at end-March 2005 and further to 43.4 per cent as at end-March 2006 and decreased to 38.2 per cent as at end-March 2007.

Investment Pattern and Earnings from Foreign Exchange Reserves: The foreign exchange reserves are invested in multi-currency, multi-asset portfolios as per the existing norms, which are similar to international practices in this regard. As at end-March, 2007, out of the total foreign currency assets of US\$ 191.9 billion, US\$ 53.0 billion was invested in securities, US \$ 92.2 billion was deposited with other central banks, BIS & IMF and US\$ 46.8 billion was in the form of deposits with foreign commercial banks.

b) RBI on Corporate Debt Restructuring

The objective of the Corporate Debt Restructuring (CDR) framework is to ensure timely and transparent mechanism for restructuring of the corporate debts of viable entities facing problems, outside the purview of BIFR, DRT and other legal proceedings, for the benefit of all concerned. In particular, the framework will aim at preserving viable corporate that are affected by certain internal and external factors and minimize the losses to the creditors and other stakeholders through an orderly and coordinated restructuring programme.

A Special Group was constituted in September 2004 with Smt. S. Gopinath, Deputy Governor, Reserve Bank of India to undertake a review of the Scheme. The Special Group had suggested certain changes / improvements in the existing Scheme for enhancing its scope and making it more efficient. Based on the recommendations made by the Special

Group revised draft guidelines on Corporate Debt Restructuring were prepared and circulated among banks for comments. On the basis of the feedback received the draft guidelines have been reviewed and the revised guidelines on CDR mechanism

The major modifications made in the existing CDR mechanism relate to

- a) Extension of the scheme to entities with outstanding exposure of Rs.10 crore or more
- b) Requirement of support of 60% of creditors by number in addition to the support of 75% of creditors by value with a view to make the decision making more equitable
- c) Discretion to the core group in dealing with wilful defaulters in certain cases other than cases involving frauds or diversion of funds with malafide intentions.
- d) Linking the restoration of asset classification prevailing on the date of reference to the CDR Cell to implementation of the CDR package within four months from the date of approval of the package.
- e) Restricting the regulatory concession in asset classification and provisioning to the first restructuring where the package also has to meet norms relating to turn-around period and minimum sacrifice and funds infusion by promoters.
- f) Convergence in the methodology for computation of economic sacrifice among banks and FIs
- g) Limiting RBI's role to providing broad guidelines for CDR mechanism
- h) Enhancing disclosures in the balance sheet for providing greater transparency
- i) Pro-rata sharing of additional finance requirement by both term lenders and working capital lenders
- j) Allowing OTS as a part of the CDR mechanism to make the exit option more flexible and
- k) Regulatory treatment of non-SLR instruments acquired while funding interest or in lieu of outstanding principal and valuation of such instruments.

c) RBI on Banking

Though the RBI, as part of its monetary management mandate, had, from the very beginning, been vested with the powers, under the RBI Act, 1934, to regulate the volume and cost of bank credit in the economy through the instruments of general credit control, it was not until 1949 that a comprehensive enactment, applicable only to the banking sector, came into existence. The Banking Regulation Act from March 1966.

The Act vested in the Reserve Bank the responsibility relating to licensing of banks, branch expansion, and liquidity of their assets, management and methods of working, amalgamation, reconstruction and liquidation.

Important changes in several provisions of the Act were made from time to time, designed to enlarge or amplify the responsibilities of the RBI or to impart flexibility to the relative provisions, commensurate with the imperatives of the banking sector developments.

Branch Authorization Policy

The RBI announced a new Branch Authorization Policy in September 2005 under which certain changes were brought about in the authorization process adopted by the RBI for the bank branches in the country.

As against the earlier system, where the banks approached the RBI, piece meal, throughout the year for branch authorization, the revised system provides for a holistic and streamlined approach for the purpose, by granting a bank-wise, annual aggregated authorization, in consultation and interaction with each applicant bank. The objective is to ensure that the banks take an integrated view of their branch- network needs, including branch relocations, mergers, conversions and closures as well as setting up of the ATMs, over a one-year time horizon, in tune with their own business strategy, and then approach the RBI for consolidated annual authorizations accordingly.

Operations of Foreign Banks in India

At present, there are 29 foreign banks operating in India with a network of 273 branches and 871 off-site ATMs. Among some circles, a doubt is sometimes expressed as to whether the regulatory environment in India is liberal in regard to the functioning of the foreign banks and whether the regulatory approach towards foreign participation in the Indian banking system is consistent with liberalized environment. Undoubtedly, the facts indicate that regulatory regime followed by the Reserve Bank in respect of foreign banks is nondiscriminatory, and is, in fact, very liberal by global standards. Here are a few facts which bear out the contention;

India issues a single class of banking licence to foreign banks and does not require them to graduate from a lower to a higher category of banking licence over a number of years, as is the practice followed in certain other jurisdictions. This single class of licence places them virtually on the same footing as an Indian bank and does not place any restrictions on the scope of their operations. Thus, a foreign bank can undertake, from the very first day of its operations, any or all of the activities permitted to an Indian bank and all foreign banks can carry on both retail as well as wholesale banking business. This is in contrast with practices in many other countries.

No restrictions have been placed on establishment of non-banking financial subsidiaries in India by the foreign banks or of their group companies. Deposit insurance cover is uniformly available to all foreign banks at a non-discriminatory rate of premium. In many other countries there is a discriminatory regime.

The prudential norms applicable to the foreign banks for capital adequacy, income recognition and asset classification, etc., are, by and large, the same as for the Indian banks.

Other prudential norms such as those for the exposure limits, investment valuation, etc., are the same as those applicable to the Indian banks.

Unlike some of the countries where overall exposure limits have been placed on the foreign-country related business, India has not placed any restriction on the kind of business that can be routed through the branches of foreign banks. This has been advantageous to the foreign bank branches as the entire home-country business is generally routed through these branches.

Substantial FII business is also handled exclusively by the foreign banks. In fact, some Indian banks contend that certain amount of positive discrimination exists in favour of foreign banks by way of lower Priority Sector lending requirement at 32 per cent of the adjusted net bank credit as against a level of 40 per cent required for the Indian banks. Unlike in the case of Indian banks, the sub-ceiling in respect of agricultural advances is also not applicable to foreign banks whereas export credit granted by the foreign banks can be reckoned towards priority sector lending obligation, which is not permitted for the Indian banks.

Notably, in terms of our WTO commitment, licences for new foreign banks may be denied when the share of foreign banks' assets in India, including both on- as well as off-balance-sheet items, in the total assets (including both on- and off-balance-sheet items) of the banking system exceeds 15 per cent. However, we have autonomously not invoked this limitation so far to deny licences to the new foreign banks even though the actual share of foreign banks in the total assets of the banking system, including both on- and off-balance-sheet items (on Notional Principal basis), has been far above the limit. This share of foreign banks stood at 49 per cent, as at end-January 2007, as mentioned in the India's Trade Policy Review, 2007

Securitization Guidelines of the RBI

The RBI had first issued the draft guidelines for securitisation of standard assets in April 2005, for public comments and after an extensive consultative process; the final guidelines were issued in February 2006, in order to facilitate an orderly development of this market. In certain quarters, however, a view has been expressed that these guidelines, tend to negate the benefits envisaged in the very concept of securitisation, and thus, are hindering the growth of securitisation market in the country. Let me attempt to briefly present today the international perspective vis-à-vis RBI guidelines and the thinking and rationale underlying our formulation.

The independence of the Reserve Bank holds the key to effective monetary control. An independent Reserve Bank can hold out threat of a high rate of interest on Government borrowing if the Government indulges in fiscal excesses. As the high rate interests retard the rate of economic growth and adversely affect the chances of the politicians' re-election they behave more responsibly than they otherwise would.

UNIT 2

Government and RBI's powers: Opening of new banks and branch licensing, Constitution of board of directors and their rights, Banks shareholders and their rights, CRR / SLR concepts, Cash / currency management, Winding up -amalgamation and mergers, Powers to control advances -selective credit control -monetary and credit policy, Audit and Inspection, Supervision and control -board for financial supervision -its scope and role, Disclosure of accounts and balance sheets, Submission of returns to RBI etc., Corporate Governance

Introduction

A bank is a financial institution that provides banking and other financial services to their customers. A bank is generally understood as an institution which provides fundamental banking services such as accepting deposits and providing loans. There are also nonbanking institutions that provide certain banking services without meeting the legal definition of a bank. Banks are a subset of the financial services industry.

Need of the Banks

Before the establishment of banks, the financial activities were handled by money lenders and individuals. At that time the interest rates were very high. Again there were no security of public savings and no uniformity regarding loans. So as to overcome such problems the organized banking sector was established, which was fully regulated by the government. The organized banking sector works within the financial system to provide loans, accept

LEGAL & REGULATORY ASPECTS OF BANKING

deposits and provide other services to their customers. The following functions of the bank explain the need of the bank and its importance:

- To provide the security to the savings of customers.
- To control the supply of money and credit
- To encourage public confidence in the working of the financial system, increase savings speedily and efficiently.
- To avoid focus of financial powers in the hands of a few individuals and institutions.
- To set equal norms and conditions (i.e. rate of interest, period of lending etc.) to all types of customers

Government policy on banking industry (Source:-The federal Reserve Act 1913 and The Banking Act 1933)

Banks operating in most of the countries must contend with heavy regulations, rules enforced by Federal and State agencies to govern their operations, service offerings, and the manner in which they grow and expand their facilities to better serve the public. A banker works within the financial system to provide loans, accept deposits, and provide other services to their customers. They must do so within a climate of extensive regulation, designed primarily to protect the public interests.

The main reasons why the banks are heavily regulated are as follows:

- To protect the safety of the public's savings.
- To control the supply of money and credit in order to achieve a nation's broad economic goal.
- To ensure equal opportunity and fairness in the public's access to credit and other vital financial services.
- To promote public confidence in the financial system, so that savings are made speedily and efficiently.
- To avoid concentrations of financial power in the hands of a few individuals and institutions.
- Provide the Government with credit, tax revenues and other services.
- To help sectors of the economy that they have special credit needs for eg. Housing, small business and agricultural loans etc.

Law of banking

Banking law is based on a contractual analysis of the relationship between the bank and customer—defined as any entity for which the bank agrees to conduct an account.

The law implies rights and obligations into this relationship as follows:

- The bank account balance is the financial position between the bank and the customer: when the account is in credit, the bank owes the balance to the customer; when the account is overdrawn, the customer owes the balance to the bank.
- The bank agrees to pay the customer's cheques up to the amount standing to the credit of the customer's account, plus any agreed overdraft limit.
- The bank may not pay from the customer's account without a mandate from the customer, e.g. cheques drawn by the customer.
- The bank agrees to promptly collect the cheques deposited to the customer's account as the customer's agent, and to credit the proceeds to the customer's account.
- The bank has a right to combine the customer's accounts, since each account is just an aspect of the same credit relationship.
- The bank has a lien on cheques deposited to the customer's account, to the extent that the customer is indebted to the bank.
- The bank must not disclose details of transactions through the customer's account—unless the customer consents, there is a public duty to disclose, the bank's interests require it, or the law demands it.
- The bank must not close a customer's account without reasonable notice, since cheques are outstanding in the ordinary course of business for several days.

These implied contractual terms may be modified by express agreement between the customer and the bank. The statutes and regulations in force within a particular jurisdiction may also modify the above terms and/or create new rights, obligations or limitations relevant to the bank-customer relationship.

Methods of Credit Control

The methods of credit control are usually categorized into (1) General (or quantitative) methods, and (2) Selective (or qualitative) methods. The Bank Rate Policy, variable reserve requirements, statutory liquidity requirement, and open market operations policy fall in the category of general credit control methods. The various directives issued by the Reserve Bank restricting the quantum and other terms of granting credit against certain specified commodities constitute the selective control method.

The main difference between the general and selective credit control methods is that the former influence the cost and overall volume of credit granted by banks. They affect credit related to the whole economy whereas the selective controls affect the flow of credit to only specified sector of the economy, wherein speculative tendency and rising trend of prices, due to excessive bank credit, is noticed.

The general credit control measures affect the (1) cost, and (2) availability (or quantum) of bank credit. The cost of credit is influenced by the Bank Rate at which the central bank provides refinance to the banks. In the past years, the Reserve bank had relied upon its powers to regulate the interest rates of bank advances and directly regulated the interest rates of banks rather than through the instruments of Bank Rate. Now the interest rates are largely deregulated.

The overall quantum of credit created by banks depends on their cash reserves, comprising cash in hand and balances with the Reserve Bank. The cash reserves increase through (1) a rise in deposit sources of banks, (2) borrowings from the Reserve Bank, or (3) by sale of their investments. Regulation of credit by the Reserve Bank means regulations of the quantum of cash reserves of commercial banks. These control measures exert their influence on the assets pattern of commercial banks. When the reserve Bank desires to control, it adopts various methods whereby the quantum of refinance is restricted and the flow of bank resources to investments and statutory reserves with the Reserve Bank is enhanced, thereby curtailing the availability of loan-able resources with the bank.

Refining Policy of Reserve Bank:

As the central bank of the country, the Reserve bank is the lender of last resort to the banking system. Its refinancing policy, therefore, has great significance to the commercial banks. Changes in this policy are carried out in two ways:

1. By varying the cost of borrowings through a variation in its Bank Rate, and
2. By varying the availability (i.e. quantum) of credit to the banks.

The Bank Rate Policy:

Section 49 of the Reserve Bank of India Act, 1934, defines Bank Rate as the standard rate at which it (the

Reserve bank) is prepared to buy or rediscount bills of exchange or other commercial papers eligible for purchase under this Act. As the provision regarding rediscounting of bills by the Reserve Bank had remained inoperative for a long time in the past, the rate charged by Reserve Bank on its advances to banks has been treated as the Bank Rate.

A change in the Bank Rate – upward or downward — usually has an immediate effect on the costs of credit available to the commercial banks from the central bank. A high Bank rate is intended to raise the cost of

Reserve Bank accommodation to banks, which in turn raises their own lending rates to the borrowers.

Discouraged by high rate of interests, the borrowers consequently reduce the level of their borrowings from the banks which in turn bring down the level or re-finance secured by them from the central bank. Thus a high Bank rate is intended to result in contraction of bank credit.

Theoretically, the Bank rate happens to be prime rate – it is a pace setter to all other rates of interests in money market, i.e all other rates of interest generally move in the same direction in which then Bank rate moves. When the central bank intends to follow the policy of high cost of money, it raises the Bank rate first, which is followed by rise in all other rates of interest. Such a policy is called the policy of dear money. The objective of such a policy happens to make money scarce and costly so as to restrict its use to the deserving purposes only.

Methods and Instruments of Credit Control:

There are many methods of credit control. These methods can be broadly divided into two categories:

I. Quantitative or General Methods.

II. Qualitative or Selective Methods.

The quantitative methods of credit control aim at influencing the quantity or total volume of credit in an economy during a particular period of time. The qualitative methods of credit control aim at influencing the quality of use of credit with respect to a particular area or field of activity.

Quantitative system of credit control includes following instruments:

- 1) Bank Rate
- 2) Open Market Operation (OMO)
- 3) Cash Reserve Ratio (CRR)
- 4) Statutory Liquidity Ratio (SLR)
- 5) Repo and Reverse Repo Rate

Qualitative system consist of the following instruments :

- 1) Selective Credit control
- 2) Rationing of Credit
- 3) Moral Persuasion
- 4) Publicity

5) Direct Action

5.3.1 Quantitative Methods of Credit Control

1. Bank Rate:

Bank rate is the rate at which central bank grant loans to the commercial banks against the security of government and other approved first class securities. According to section 49 of RBI Act, "Bank rate is the standard rate on which RBI purchase or discount such exchange bills or commercial papers which can be purchased under this act." Reserve Bank of India controls credit by affecting quantity and cost of credit money through its bank rate policy. But this method of credit control would be effective only when there is organized money market and commercial banks depend on reserve bank for their credit.

Reserve Bank adopts cheap or Dear Monetary Policy according to the economic conditions of the country.

RBI decreases bank rate to increase the quantity of the credit. This is called cheap monetary policy. Decrease in bank rate decreases costs of credit i.e. decrease in interest rate. As a result of this quantity of credit increases. According to dear monetary policy of RBI increases bank rate to decrease quantity of credit in the country. Increase in bank rate increases cost of credit i.e. increase interest rate and this will result in decrease in quantity of credit.

Operation of Bank Rate Policy in India: At the time of establishment of RBI the bank rate was 3.5% which had changed time to time. Till 1951, the bank rate was constant at 3% as Reserve Bank followed

Cheap Money Policy during this period.

Since 1951 till now bank rate has continuously changing. In 1991 at the time of higher inflation, bank rate has changed twice and increased from 10% to 11%. On 29 April, 1998, it has reduced from 11% to 9%.

It was further reduced to 8% in march, 1999 and 7% in April,2000. it was further reduced to 8% in march,1999 and 7% in April,2000. it was further changed several times and on 23 October, 2001 it reduced to 6.5%.Now

The bank rate policy of credit control has not been succeeding in India. As it is failed to control inflationary trend in the economy. It has failed to influence interest rate in the money market.

The bank rate policy proves inefficient due to following reasons :

- Major part of the credit in the market is made available by non-banking institutions. The interest charged by these institutions have no direct relation with the bank rate.
- Most of the changes in bank rate has been made effective for combating inflationary trends

- Speculative tendencies in the economy carry large premiums in the form of huge margins of profit.

A small change in bank rate does not significantly affect the profit margin.

Priority sector lending has almost become immense to the effect of changes in the bank rate.

Increasing non-dependence of commercial banks on the central bank for rediscounting facilities is one of the ineffective bank rates in India. Though the bank rate policy has not been effective in India. Yet the Reserve Bank has been using it more and more as a weapon to control deflationary pressure in the economy.

During the last few years, the bank rate has been reduced several times to combat the deflationary pressure in the economy. But this year it is currently stipulated at 6%.

2. Open Market Operations:

The term 'Open market operation' implies the purchase and sale by the Central Bank not only the Govt. securities but also of other eligible papers. Like bills and securities of private concerns section 17(8) of RBI

Act. Empowers Reserve Bank to purchase the securities of central Govt. state Govt. and other autonomous institutions. Apart from this section 17(2)(A) empower Reserve Bank to purchase or sell of short term bills.

Open market operations are used as supporting instrument of bank rate. This method is used to influence the flow of credit. Sale and purchase of Govt. securities influence the cash reserve ratio with the commercial banks and hence these operations control their credit creation power. These operations will have both anti-inflationary and anti-deflationary effects. When the economy is faced with the inflationary pressures, the central bank would like the commercial banks to contract the supply of credit. To achieve this objective the central bank would sell the Govt. securities to the commercial banks. The banks would transfer a part of their cash reserve to the central bank towards the payment for these securities. Consequently the cash reserve with the commercial banks will be reduced. It would lead to a contraction in the credit creation power of the commercial banks. Similarly, open market operations can also be used as anti-deflationary measures. In this situation, the central bank will purchase securities from the commercial banks. In this situation, the central bank will purchase securities from the commercial banks. In the process, the cash reserves with the commercial banks will increase and they would be enabled to create more credit.

The open market operations in India are limited by Reserve Bank. The bank has used this policy only to make successful government debt policy and to maintain price stability of

Govt. securities. It is used to fulfill seasonal credit requirements of commercial banks. The multiple objectives of open market operations are as follows:

- a. To support government's borrowing plans.
- b. To smoothen the seasonal flow of funds in the market.
- c. To control the amount of bank credit available in the market by affecting the reserve base of the banks.
- d. To affect cost of funds in the market as an increase/ decrease in money supply affects the cost of funds in the market.
- e. To reduce government's liability by purchasing securities sold at a higher interest rate and subsequently selling fresh securities at a lower rate. This activity is significant especially in case of declining interest rates.

3. Cash Reserve Ratio (CRR):

The present banking system is called a 'fractional reserve banking system', because the banks need to keep only a fraction of their deposit liabilities in the form of liquid cash. "Cash reserve ratio refers to the cash which banks have to maintain with the RBI as a certain percentage of their demand and time liabilities."

Originally the objective was to ensure safety and liquidity of bank deposits. But over years it has emerged as an effective tool of directly regulating the lending capacity of the banks i.e., as an instrument of the monetary policy. RBI has the power to impose penal interest rates on the banks in case of a shortfall in the prescribed CRR. The penal rate is generally higher than the bank rate and it increases if the default is prolonged. RBI can also disallow any fresh access to refinance in such cases.

The RBI controls credit through change in Cash Reserve Ratio of commercial banks. According to section

42(1) of RBI Act every schedule bank has to maintain a certain percentage reserve of its time and demand deposits. This ratio can be varied from 3% to 15% as directed by the Reserve Bank. Reserve Bank itself changed this ratio according to the credit requirement of the economy. It has been changed several times in the history of Reserve Bank of India. The cash reserve ratio affects on the lend able funds of commercial banks. If this ratio increases the credit creation capacity of commercial banks decreases. On the other hand if this ratio decreases the credit creation capacity of commercial banks increases.

On 17 April 2008, the Reserve Bank of India hiked the cash reserve ratio of scheduled commercial banks, regional rural banks, scheduled state co-operative banks and scheduled primary (urban) co-operative banks by 50 basis points to 8 per cent in two stages effective 26 April 2008 and 10 May 2008.

The monetary authority stated that as a result of the above increase in CRR on liabilities of the banking system, an amount of about Rs.18,500 crore of resources of banks would be absorbed. In this context, it may be noted that surplus liquidity in the banking system amounted to Rs.2,43,566 crore as on 4 April 2008. The Reserve Bank's move comes at a time when there are only 12 days left for its monetary policy.

The monetary policy is due to be announced on 29 April 2008. The hike in the cash reserve ratio of banks is a measure aimed at reducing liquidity in the banking system thereby reducing the money supply which in turn is expected to help curb inflation. The CRR hike will put margins of banks under a bit of a pressure since they won't be earning anything on the money that they park with the RBI as cash reserve. The CRR hike will put margins of banks under a bit of a pressure since they won't be earning anything on the money that they park with the RBI as cash reserve.

On 29 April 2008, the Reserve Bank of India released its annual monetary policy statement for the year 2008-09. It increased the cash reserve ratio for scheduled commercial banks by 25 basis points to 8.25 per cent with effect from 24 May 2008. It was only less than a fortnight ago that the bank had raised the cash reserve ratio. On 17 April, the monetary authority had announced that the CRR would be raised by 25 basis points with effect from 26 April 2008 and by another 25 basis points with effect from 10 May 2008. The two increases announced on 17 April were expected to suck out Rs.18,500 crore from the banking system.

Recently, RBI has hiked the cash reserve ratio (CRR) by 25 basis points to 9 per cent beginning 30 August

2008. The 25 basis points hike in the cash reserve ratio will suck out about Rs.8,000-8,500 crore of liquidity from the banking system.

4. Statutory Liquidity Ratio (SLR):

Under the Banking Regulation Act (sec 24(2A)) as amended in 1962, banks have to maintain a minimum liquid assets of 25 percent of their demand and time liabilities in India. The assets classified as liquid for fulfilling the SLR requirements are: cash in hand, balance in the current account with SBI and its subsidiaries, gold.

Through SLR, the transfer of banking funds takes place to the government, and a corresponding reduction in the credit availability to private industry. It is therefore another instrument of monetary policy. The main objectives of SLR are summarized as:

1. To restrict/ relax the expansion of bank credit.
2. To augment the investment of banks in government securities.
3. To ensure solvency of the banks.

The Reserve Bank of India is empowered to change this ratio. As on 21, 1997, it was fixed to 25% of the total deposits of Banks. It also influences the credit creation capacity of the banks. The effect of both cash reserve ratio and statutory liquidity ratio on credit expansion is similar. Penalties are levied by RBI for not maintaining these ratios from scheduled banks.

5. Repo Rate and Reverse Repo Rate:

There is two kind of repo and are as under:

I. Inter Bank Repo: Such repos are now permitted only under regulated conditions. Repos are misused by banks/brokers during the 1992 securities scam, they were banned subsequently. With the lifting of the ban in 1995, repos were permitted for restricted, eligible participants and instruments. Initially, repo deals were allowed in T-bills and five dated securities on the NSE. With gradual liberalization over the years, all central govt. dated securities, state Govt. security and T-bills of all maturities have been made eligible for repo. Banks and PDs can undertake repo deals if they are routed through the SGL, accounts maintained by the RBI. Repos are allowed to develop a secondary market in PSU bonds, FIs bonds, corporate bonds and private debt securities if they are held in demat form and the deals are done through recognized stock exchange(s). There are no restrictions regarding a minimum period for inter-bank repo deals. Non-bank participants (i.e., FIs and other specified participants) are allowed to participate only in the reverse repo that is they can only lend money to other eligible participants. The non-bank entities holding SGL accounts with the RBI can enter into reverse repo transactions with banks/PDs, in all Government securities.

II. RBI Repos: The RBI undertakes repo/reverse repo operations with banks and PDs as part of its OMOs, to absorb/inject liquidity. With the introduction of the LAF, the RBI has been injecting liquidity into the system through repo on a daily basis. The repo auctions are conducted on all working days except Saturdays and are restricted to banks and PDs. This is in addition to the liquidity support given by the RBI to the PDs through refinance/reverse repo facility at a fixed price. Auctions under LAF were earlier conducted on a uniform price basis, that is, there was a single repo rate for all successful bidders. Multiple price auction was introduced subsequently. The weighted average cut-off yield in case of a multiple price auction is released to the public. This, along with the cut-off price, provides a band for call money to operate.

The RBI conducts repo auctions to provide banks with an outlet for managing short-term liquidity; even out short-term liquidity fluctuations in the money market; and optimize returns on short-term surplus liquid funds. The RBI has switched over from discriminatory price auction repo to the daily fixed rate repos auction system. Fixed rate repos are single money market rates, bring about orderly conditions in the forex market and impart stability to short-term interest rates by setting a floor for call money rates. The RBI participants actively in the call money market with LAF repos operations conducted throughout the year to modulate the surplus liquidity in the market. It also conducts

reverse repo operations under the LAF to prevent sudden spurts in the call rates. Both repos and reverse repo operations play an effective role in imparting stability to the market.

The repo rate has become akin to a singling rate, together with the B/R. the repo rate serve the purpose of a floor and the B/R that of a cap for the money market to operate within an interest corridor. With the introduction of variable repo rates and daily repo auctions, a market-determined benchmark is expected to emerge for the call (overnight) rate. As a result of the conversion of the call/money market into a pure interbank call/notice money market, the repo rate, along with the B/R and CRR, emerged as an important tool of liquidity and monetary management.

To sum up, the RBI's regulation of money and credit now comprises of (1) the reactivation of OMOs and introduction of repos, (2) the introduction of LAF and its emergence as one of the significant operating instruments, (3) the reactivation of B/R and the use of repo rate, (4) the continuation of the use of the CRR.

The B/R changes, combined with changes in the CRR and LAF repo rates have emerged as active and important tools of liquidity and monetary management. The LAF has developed as an effective tool for absorbing/injecting liquidity on a day to day basis in a flexible manner and for providing a corridor for the call money and other money markets.

On 29 July 2008, the Reserve Bank of India increased the repo rate by 50 basis points to 9 per cent. Banks are aggressively using the repo facility of the RBI since the beginning of July. They borrowed almost Rs.38,900 crore per day from the RBI through its liquidity adjustment facility. Therefore the hike in the repo rate by the RBI will surely put some pressure on the cost of funds of banks.

Qualitative Methods of Credit Control

Under section 21 of RBI Act, Reserve Bank is empowered to regulate control and direct the commercial banks regarding their loans and advances. Qualitative methods are used to affect the use, distribution and direction of credit. It is used to encourage such economic authorities as desirable and to discourage those which are injurious for the economy. It also helps to prevent speculative holding with the help of bank credit of certain essential commodities like food grain, sugar, cotton and basic raw materials and thereby checking an undue rise in their price. Reserve bank of India from time to time adopted the following qualitative methods of credit control.

1. Selective Credit Control:

Section 36(1) (a) of the Banking Regulation Act, empowers the RBI to contain or prohibit banking companies generally or any banking company. The objective of these controls is to discourage some forms of activities while encouraging others. Such controls are used in respect of agriculture commodities, which are subject to speculative hoarding and wide

price fluctuation. Under section 21 of the banking regulation Act, 1949, the Reserve Bank is empowered to issue directives to banking companies regarding making of advances.

These directions may be as follows:

The purpose for which advances may or may not be made.

- Fixing the margin requirements for advances against each commodity.
- Fixing of maximum limit to be advanced by banks to a particular borrower.
- Fixing of rate of interest and other terms for making advances.
- Fixing of maximum guarantees may be given by the banks on behalf of any firm or company.

Prohibition on grant of credit against book debts and clean credits.

Some of the relative credit controls are as follows :

(a) Differential Discount Rates: The reserve Bank fixes different discounting rates for the bills of different sectors. The sector for which more credit is to be made available the exchange bills re discounted at a lower rate. On the other hand, if RBI wants to discourage credit for a particular sector, it increases the discount rate for bills or the facility for rediscounting is postponed.

(b) Credit Authorization Scheme: This scheme was introduced in November 1965 with the objectives of enforce financial discipline on the larger borrowers and ensure that they did not pre-empt scarce bank resources. Through this scheme, the RBI regulates not only the quantum but also the term of credit flows. It had following objectives:

- To regulate credit to control inflation.
- To enforce financial discipline on large borrowers.
- To ensure that end use of credit is for genuinely productive purposes.
- To ensure that large borrowers do not monopolise scarce bank credit.
- To ensure that credit is supplied in accordance with the needs of borrowers and goals of planning.

Under this scheme, commercial banks are required to obtain RBI's permission before sanctioning any fresh credit of Rs. Six crore or more to any single borrower. This limit may be changed time by time.

(c) Fixation of Margin: The commercial banks generally advance loans to their customers against some security or securities offered by the borrowers and acceptable to the banks. The commercial banks do not lend up to the full amount of the value of a security but lend an amount less than its value. The margin requirements against specific securities are determined by the Reserve Bank. RBI changed the margin frequently according to the credit policy. Changes in margin requirements are designed to influence the flow of credit against specific commodities. A rise in the margin requirements results in contraction in the borrowing value of the security and similarly, a fall in the margin requirement results

in expansion in the borrowing value of the security. If RBI desires that more loans should be advanced against particular securities, it can lower the margin requirement. Similarly, if RBI desires to check the expansion of credit against particular securities it can raise the margin requirement.

(d) Reserve Bank can also instruct commercial banks charging discriminating rates of interest on certain types of advances.

(e) Reserve Bank from time to time fixes ceiling n amount of credit for certain purposes.

(f) Reserve Bank can ban on advances to specific sector to check inflationary pressures.

2. Rationing of Credit:

In this method the RBI seeks to limit the maximum or ceiling of loans and advances and also in certain cases, fixes ceiling for specific categories of loans and advances. The various methods adopted under this arrangement are:

- Requiring the banks to restrict the drawing power of their borrower under cash credit limit.
- Stipulating certain targets for credit distribution for the priority sector.
- Stipulating a prescribed credit deposit ratio for rural semi urban branches of banks.

If the rationing of credit is done with reference to the total amount, it is a quantitative control, but if it is done with reference to specific types of credit, it assumes a qualitative control. Reserve Bank can also prescribe the minimum ratio between capital and total assets.

Monetary Policy Framework

The monetary policy framework in India, as it is today, has evolved over the years. The success of monetary policy depends on many factors.

Operating Target

There was a time when the Reserve Bank used broad money (M3) as the policy target. However, with the weakened relationship between money, output and prices, it replaced M3 as a policy target with a multiple indicators approach.

As the name suggests, the multiple indicators approach looks at a large number of indicators from which policy perspectives are derived. Interest rates or rates of return in different segments of the financial markets along with data on currency, credit, trade, capital flows, fiscal position, inflation, exchange rate, and such other indicators, are juxtaposed with the output data to assess the underlying trends in different sectors. Such an approach provides considerable flexibility to the Reserve Bank to respond more effectively to changes in domestic and international economic environment and financial market conditions.

Monetary Policy Instruments

The Reserve Bank traditionally relied on direct instruments of monetary control such as Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR). Cash Reserve Ratio indicates the quantum of cash that banks are required to keep with the Reserve Bank as a proportion of their net demand and time liabilities. SLR prescribes the amount of money that banks must invest in securities issued by the government.

In the late 1990s, the Reserve Bank restructured its operating framework for monetary policy to rely more on indirect instruments such as Open

Market Operations (OMOs). In addition, in the early 2000s, the Reserve Bank instituted Liquidity Adjustment Facility (LAF) to manage day-to-day liquidity in the banking system. These facilities enable injection or absorption of liquidity that is consistent with the prevailing monetary policy stance.

The repo rate (at which liquidity is injected) and reverse repo rate (at which liquidity is absorbed) under the LAF have emerged as the main instruments for the Reserve Bank's interest rate signalling in the Indian economy. The armour of instruments with the Reserve Bank to manage liquidity was strengthened in April 2004 with the Market Stabilisation Scheme (MSS). The MSS was specifically introduced to manage excess liquidity arising out of huge capital flows coming to India from abroad.

In addition, the Reserve Bank also uses prudential tools to modulate the flow of credit to certain sectors so as to ensure financial stability. The availability of multiple instruments and their flexible use in the implementation of monetary policy have enabled the Reserve Bank to successfully influence the liquidity and interest rate conditions in the economy. While the Reserve Bank prefers indirect instruments of monetary policy, it has not hesitated in taking recourse to direct instruments if circumstances warrant such actions. Often, complex situations require varied combination of direct and indirect instruments to make the policy transmission effective.

The recent legislative amendments to the Reserve Bank of India Act, 1934 enable a flexible use of CRR for monetary management, without being constrained by a statutory floor or ceiling on the level of the CRR. The amendments to the Banking Regulation Act, 1949 also provide further flexibility in liquidity management by enabling the Reserve Bank to lower the SLR to levels below the pre-amendment statutory minimum of 25 per cent of net demand and time liabilities (NDTL) of banks.

Monetary Policy Transmission

An important factor that determines the effectiveness of monetary policy is its transmission – a process through which changes in the policy achieve the objectives of controlling inflation and achieving growth.

In the implementation of monetary policy, a number of transmission channels have been identified for influencing real sector activity. These are (a) the quantum channel relating to

money supply and credit; (b) the interest rate channel; (c) the exchange rate channel; and (d) the asset price channel.

How these channels function in an economy depends on its stage of development and its underlying financial structure. For example, in an open economy one would expect the exchange rate channel to be important; similarly, in an economy where banks are the major source of finance as against the capital market, credit channel could be a major conduit for monetary transmission. Of course, these channels are not mutually exclusive, and there could be considerable feedback and interaction among them.

Institutional Mechanism for Monetary Policy-making

The Reserve Bank has made internal institutional arrangements for guiding the process of monetary policy formulation.

Currency Management

The Reserve Bank carries out the currency management function through its Department of Currency Management located at its Central Office in Mumbai, 19 Issue Offices located across the country and a currency chest at its Kochi branch. To facilitate the distribution of notes and rupee coins across the country, the Reserve Bank has authorized selected branches of banks to establish currency chests. There is a network of 4,281 Currency Chests and 4,044 Small Coin Depots with other banks. Currency chests are storehouses where bank notes and rupee coins are stocked on behalf of the Reserve Bank. The currency chests have been established with State Bank of India, six associate banks, nationalized banks, private sector banks, a foreign bank, a state cooperative bank and a regional rural bank. Deposits into the currency chest are treated as reserves with the Reserve Bank and are included in the CRR. The reverse is applicable for withdrawals from chests. Like currency chests, there are also small coin depots which have been established by the authorized bank branches to stock small coins. The small coin depots distribute small coins to other bank branches in their area of operation.

The Department of Currency Management makes recommendations on design of bank notes to the Central Government, forecasts the demand for notes, and ensures smooth distribution of notes and coins throughout the country. It arranges to withdraw unfit notes, administers the provisions of the RBI (Note Refund) Rules, 2009 (these rules deal with the payment of value of the soiled or mutilated notes) and reviews/rationalises the work systems and procedures at the issue offices on an ongoing basis.

The RBI Act requires that the Reserve Bank's affairs relating to note issue and its general banking business be conducted through two separate departments – the Issue Department and the Banking Department. All transactions relating to the issue of currency notes are separately conducted, for accounting purposes, in the Issue Department. The Issue Department is liable for the aggregate value of the currency notes of the Government of India (currency notes issued by the Government of India prior to the issue of bank notes by the Reserve Bank) and bank notes of the Reserve Bank in circulation from time to time and

it maintains eligible assets for equivalent value. The assets which form the backing for note issue are kept wholly distinct from those of the Banking Department. The Issue Department is permitted to issue notes only in exchange for notes of other denominations or against prescribed assets.

This Department is also responsible for getting its periodical requirements of notes/coins from the currency printing presses/mints, distribution of notes and coins among the public as well as withdrawal of unserviceable notes and coins from circulation. The mechanism for putting currency into circulation and its withdrawal from circulation (that is, expansion and contraction of currency, respectively) is effected through the Banking Department.

Currency Distribution

The Government of India on the advice of the Reserve Bank decides on the various denominations of the notes to be printed. The Reserve Bank coordinates with the Government in designing the banknotes, including their security features.

For printing of notes, the Security Printing and Minting Corporation of India Limited (SPMCIL), a wholly owned company of the Government of India, has set up printing presses at Nashik, Maharashtra and Dewas, Madhya Pradesh.

The Bharatiya Reserve Bank Note Mudran Pvt. Ltd. (BRBNMPL), a wholly owned subsidiary of the Reserve Bank, also has set up printing presses at Mysore in Karnataka and Salboni in West Bengal. The Reserve Bank estimates the quantity of notes (denomination-wise) that is likely to be required and places indents with the various presses. The notes received from the presses are then issued for circulation both through remittances to banks as also across the Reserve Bank counters. Currency chests, which are maintained by banks, store soiled and re-issuable notes, as also fresh banknotes. The banks send notes, which in their opinion are unfit for circulation, back to the Reserve Bank. The Reserve Bank examines these notes and re-issues those that are found fit for circulation. The soiled notes are destroyed, through shredding, so as to maintain the quality of notes in circulation.

Combating Counterfeiting

To combat the incidence of forged notes, the Reserve Bank has taken certain measures like publicity campaigns on security features of bank notes and display of "Know Your Bank note" poster at bank branches including at offsite ATMs. The Reserve Bank, in consultation with the Government of India, periodically reviews and upgrades the security features of the bank notes to deter counterfeiting. It also shares information with various law enforcement agencies to address the issue of counterfeiting. It has also issued detailed guidelines to banks and government treasury offices on how to detect and impound counterfeit notes.

Banker and Debt Manager to Government

Since its inception, the Reserve Bank has undertaken the traditional central banking function of managing the government's banking transactions. The Reserve Bank of India

Act, 1934 requires the Central Government to entrust the Reserve Bank with all its money, remittance, exchange and banking transactions in India and the management of its public debt. The Government also deposits its cash balances with the Reserve Bank. The Reserve Bank may also, by agreement, act as the banker to a State Government. Currently, the Reserve Bank acts as banker to all the State Governments in India, except Jammu & Kashmir and Sikkim. It has limited agreements for the management of the public debt of these two State Governments.

As a banker to the Government, the Reserve Bank receives and pays money on behalf of the various Government departments. As it has offices in only 27 locations, the Reserve Bank appoints other banks to act as its agents for undertaking the banking business on behalf of the governments. The Reserve Bank pays agency bank charges to the banks for undertaking the government business on its behalf. The Reserve Bank has well defined obligations and provides several services to the governments. The Central Government and State Governments may make rules for the receipt, custody and disbursement of money from the consolidated fund, contingency fund, and public account.

These rules are legally binding on the Reserve Bank.

The Reserve Bank also undertakes to float loans and manage them on behalf of the Governments. It also provides Ways and Means Advances – a short-term interest bearing advance – to the Governments, to meet the temporary mismatches in their receipts and payments. Besides, it arranges for investments of surplus cash balances of the Governments as a portfolio manager. The Reserve Bank also acts as adviser to Government, whenever called upon to do so, on monetary and banking related matters.

The banking functions for the governments are carried out by the Public Accounts Departments at the offices / branches of the Reserve Bank, while management of public debt including floatation of new loans is done at Public Debt Office at offices / branches of the Reserve Bank and by the Internal Debt Management Department at the Central Office. For the final compilation of the Government accounts, both of the centre and states, the Nagpur office of the Reserve Bank has a Central Accounts Section.

Banker to the Central Government

Under the administrative arrangements, the Central Government is required to maintain a minimum cash balance with the Reserve Bank. Currently, this amount is Rs.10 crore on a daily basis and Rs.100 crore on Fridays, as also at the end of March and July.

Under a scheme introduced in 1976, every ministry and department of the Central Government has been allotted a specific public sector bank for handling its transactions. Hence, the Reserve Bank does not handle government's day-to-day transactions as before, except where it has been nominated as banker to a particular ministry or department.

In 2004, a Market Stabilisation Scheme (MSS) was introduced for issuing of treasury bills and dated securities over and above the normal market borrowing programme of the

Central Government for absorbing excess liquidity. The Reserve Bank maintains a separate MSS cash balance of the Government, which is not part of the Consolidated Fund of India.

Management of Public Debt

The Reserve Bank manages the public debt and issues new loans on behalf of the Central and State Governments. It involves issue and retirement of rupee loans, interest payment on the loan and operational matters about debt certificates and their registration.

The union budget decides the annual borrowing needs of the Central Government. Parameters, such as, interest rate, timing and manner of raising of loans are influenced by the state of liquidity and the expectations of the market. The Reserve Bank's debt management policy aims at minimising the cost of borrowing, reducing the roll-over risk, smoothening the maturity structure of debt, and improving depth and liquidity of Government securities markets by developing an active secondary market.

While formulating the borrowing programme for the year, the Government and the Reserve Bank take into account a number of factors, such as, the amount of Central and State loans maturing during the year, the estimate available resources, and the absorptive capacity of the market.

Bankers to the Banks

Banks are required to maintain a portion of their demand and time liabilities as cash reserves with the Reserve Bank, thus necessitating a need for maintaining accounts with the Bank. Further, banks are in the business of accepting deposits and giving loans. Since different persons deal with different banks, in order to settle transactions between various customers maintaining accounts with different banks, these banks have to settle transactions among each other. Settlement of inter-bank obligations thus assumes importance.

To facilitate smooth operation of this function of banks, an arrangement has to be made to transfer money from one bank to another. This is usually done through the mechanism of a clearing house where banks present cheques and other such instruments for clearing. Many banks also engage in other financial activities, such as, buying and selling securities and foreign currencies. Here too, they need to exchange funds between themselves. In order to facilitate a smooth inter-bank transfer of funds, or to make payments and to receive funds on their behalf, banks need a common banker.

In order to meet the above objectives, in India, the Reserve Bank provides banks with the facility of opening accounts with itself. This is the 'Banker to Banks' function of the Reserve Bank, which is delivered through the Deposit Accounts Department (DAD) at the Regional offices. The Department of Government and Bank Accounts oversees this function and formulates policy and issues operational instructions to DAD.

Reserve Bank as Banker to Banks

To fulfill this function, the Reserve Bank opens current accounts of banks with itself, enabling these banks to maintain cash reserves as well as to carry out inter-bank transactions through these accounts. Inter-bank accounts can also be settled by transfer of money through electronic fund transfer system, such as, the Real Time Gross Settlement System (RTGS).

The Reserve Bank continuously monitors operations of these accounts to ensure that defaults do not take place. Among other provisions, the Reserve Bank stipulates minimum balances to be maintained by banks in these accounts. Since banks need to settle funds with each other at various places in India, they are allowed to open accounts with different regional offices of the Reserve Bank. The Reserve Bank also facilitates remittance of funds from a bank's surplus account at one location to its deficit account at another.

Such transfers are electronically routed through a computerized system.

The computerization of accounts at the Reserve Bank has greatly facilitated banks' monitoring of their funds position in various accounts across different locations on a real-time basis.

As Banker to Banks, the Reserve Bank focuses on:

- Enabling smooth, swift and seamless clearing and settlement of inter-bank obligations.
- Providing an efficient means of funds transfer for banks.
- Enabling banks to maintain their accounts with the Reserve Bank for statutory reserve requirements and maintenance of transaction balances.
- Acting as a lender of last resort.

Financial Regulation and Supervision

The Reserve Bank's regulatory and supervisory domain extends not only to the Indian banking system but also to the development financial institutions (DFIs), non-banking financial companies (NBFCs), primary dealers, credit information companies and select segments of the financial markets. In respect of banks, the Reserve Bank derives its powers from the provisions of the Banking Regulation Act, 1949, while the other entities and markets are regulated and supervised under the provisions of the Reserve Bank of India Act, 1934. The credit information companies are regulated under the provisions of Credit Information Companies (Regulation) Act, 2005.

As the regulator and the supervisor of the banking system, the Reserve Bank has a critical role to play in ensuring the system's safety and soundness on an ongoing basis. The objective of this function is to protect the interest of depositors through an effective prudential regulatory framework for orderly development and conduct of banking operations, and to maintain overall financial stability through various policy measures.

India's financial system includes commercial banks, regional rural banks, local area banks, cooperative banks, financial institutions and non-banking financial companies. The banking

sector reforms since the 1990s made stability in the financial sector an important plank of the Reserve Bank's functions. Besides, the global financial markets have, in the last 75 years, grown phenomenally in terms of volumes, number of players and instruments. The Reserve Bank's regulatory and supervisory role has, therefore, acquired added importance. The Board of Financial Supervision (BFS), constituted in November 1994, is the principal guiding force behind the Reserve Bank's regulatory and supervisory initiatives.

There are various departments in the Reserve Bank that perform these regulatory and supervisory functions. The Department of Banking Operations and Development (DBOD) frames regulations for commercial banks. The Department of Banking Supervision (DBS) undertakes supervision of commercial banks, including the local area banks and all-India financial institutions. The Department of Non-Banking Supervision (DNBS) regulates and supervises the Non-Banking Financial Companies (NBFCs) while the Urban Banks Department (UBD) regulates and supervises the Urban Cooperative Banks (UCBs). Rural Planning and Credit Department (RPCD) regulates the Regional Rural Banks (RRBs) and the Rural Cooperative Banks, whereas their supervision has been entrusted to NABARD.

Regulatory and Supervisory Functions

Traditionally, the Reserve Bank's regulatory and supervisory policy initiatives are aimed at protection of the depositors' interests, orderly development and conduct of banking operations, and liquidity and solvency of banks. With the onset of banking sector reforms during the 1990s, various prudential measures were initiated that have, in effect, strengthened the Indian banking system over a period of time. Improved financial soundness of banks has helped them to show stability and resilience in the face of the recent severe global financial crisis, which had seriously impacted several banks and financial institutions in advanced countries. However, there is still a need to strengthen the regulatory and supervisory architecture. The Reserve Bank represents India in various international fora, such as, the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB). Its presence on such bodies has enabled the Reserve Bank's active participation in the process of evolving global standards for enhanced regulation and supervision of banks.

The major regulatory functions of the Reserve Bank with respect to the various components of the financial system are as follows:

(i) Commercial Banks

Licensing

For commencing banking operations in India, whether by an Indian or a foreign bank, a licence from the Reserve Bank is required. The opening of new branches by banks and change in the location of existing branches are also regulated as per the Branch Authorisation Policy. This policy has recently been liberalised significantly and Indian banks no longer require a licence from the Reserve Bank for opening a branch at a place with population of below 50,000. The Reserve Bank continues to emphasise opening of

branches by banks in unbanked and under-banked areas of the country. The Reserve Bank also regulates merger, amalgamation and winding up of banks.

Corporate Governance

The Reserve Bank's policy objective is to ensure high-quality corporate governance in banks. It has issued guidelines stipulating 'fit and proper' criteria for directors of banks. In terms of the guidelines, a majority of the directors of banks are required to have special knowledge or practical experience in various relevant areas. The Reserve Bank also has powers to appoint additional directors on the board of a banking company.

Statutory Pre-emptions

Commercial banks are required to maintain a certain portion of their Net Demand and Time Liabilities (NDTL) in the form of cash with the Reserve Bank, called Cash Reserve Ratio (CRR) and in the form of investment in unencumbered approved securities, called Statutory Liquidity Ratio (SLR). The Reserve Bank also monitors compliance with these requirements by banks in their day-to-day operations.

Interest Rate

The interest rates on most of the categories of deposits and lending transactions have been deregulated and are largely determined by banks.

However, the Reserve Bank regulates the interest rates on savings bank accounts and deposits of non-resident Indians (NRI), small loans up to rupees two lakh, export credits and a few other categories of advances.

Prudential Norms

The Reserve Bank has prescribed prudential norms to be followed by banks in several areas of their operations. It keeps a close watch on developing trends in the financial markets, and fine-tunes the prudential policies.

In order to strengthen the balance sheets of banks, the Reserve Bank has been prescribing appropriate prudential norms for them in regard to income recognition, asset classification and provisioning, capital adequacy, investments portfolio and capital market exposures, to name a few. A brief description of these norms is furnished below:

Capital Adequacy

The Reserve Bank has instructed banks to maintain adequate capital on a continuous basis. The adequacy of capital is measured in terms of Capital to Risk-Weighted Assets Ratio (CRAR). Under the recently revised framework, banks are required to maintain adequate capital for credit risk, market risk, operational risk and other risks. Basel II standardised approach is applicable with road map drawn up for advanced approaches.

Loans and Advances

In order to maintain the quality of their loans and advances, the Reserve Bank requires banks to classify their loan assets as performing and non-performing assets (NPA), primarily based on the record of recovery from the borrowers. NPAs are further categorised into Sub-standard, Doubtful and Loss Assets depending upon age of the NPAs and value of available securities. Banks are also required to make appropriate provisions against each category of NPAs. Banks are also required to have exposure limits in place to prevent credit concentration risk and limit exposures to sensitive sectors, such as, capital markets and real estate.

For Investments

The Reserve Bank requires banks to classify their investment portfolios into three categories for the purpose of valuation: Held to Maturity (HTM), Available for Sale (AFS) and Held for Trading (HFT). The securities held under HFT and AFS categories have to be marked-to-market periodically and depreciation, if any, needs appropriate provisions by banks. Securities under HTM category must be carried at acquisition / amortised cost, subject to certain conditions.

Risk Management

Banks, in their daily business, face various kinds of risks. The Reserve Bank requires banks to have effective risk management systems to cover credit risk, market risk, operational risk and other risks. It has issued guidelines, based on the Basel II capital adequacy framework, on how to measure these risks as well as how to manage them

Disclosure Norms

Public disclosure of relevant information is an important tool for enforcing market discipline. Hence, over the years, the Reserve Bank has strengthened the disclosure norms for banks. Banks are now required to make disclosures in their annual report, among others, about capital adequacy, asset quality, liquidity, earnings aspects and penalties, if any, imposed on them by the regulator.

Know Your Customer Norms

To prevent money laundering through the banking system, the Reserve Bank has issued 'Know Your Customer' (KYC), Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) guidelines. Banks are required to carry out KYC exercise for all their customers to establish their identity and report suspicious transactions to authorities.

Protection of Small Depositors

The Reserve Bank has set up Deposit Insurance and Credit Guarantee Corporation (DICGC) to protect the interest of small depositors, in case of bank failure. The DICGC provides insurance cover to all eligible bank depositors up to Rs.1 lakh per depositor per bank.

Para - banking Activities

The banking sector reforms and the gradual deregulation of the sector inspired many banks to undertake non-traditional banking activities, also known as para-banking. The Reserve Bank has permitted banks to undertake diversified activities, such as, asset management, mutual funds business, insurance business, merchant banking activities, factoring services, venture capital, card business, equity participation in venture funds and leasing.

Supervisory Functions

The Reserve Bank undertakes supervision of banks to monitor and ensure compliance by them with its regulatory policy framework. This is achieved through on-site inspection, off-site surveillance and periodic meetings with top management of banks.

On-site Inspection

The Reserve Bank undertakes annual on-site inspection of banks to assess their financial health and to evaluate their performance in terms of quality of management, capital adequacy, asset quality, earnings, liquidity position as well as internal control systems. Based on the findings of the inspection, banks are assigned supervisory ratings based on the CAMELS (CALCS for foreign banks in India) supervisory model and are required to address the weaknesses identified.

Off-site Surveillance

The Reserve Bank requires banks to submit detailed and structured information periodically under its Off Site Surveillance and Monitoring System (OSMOS). This information is thoroughly analysed by the RBI to assess the health of individual banks and that of the banking system, and also glean early warning signals which could serve as a trigger for necessary supervisory intervention.

Periodic Meetings

The Reserve Bank periodically meets the top management of banks to discuss the findings of its inspections. In addition, it also has quarterly / monthly discussions with them on important aspects based on OSMOS returns and other inputs.

Monitoring of Frauds

The Reserve Bank regularly sensitises banks about common fraud-prone areas, the modus operandi and the measures necessary to prevent frauds. It also cautions banks about unscrupulous borrowers who have perpetrated frauds with other banks.

RBI on Banking

Though the RBI, as part of its monetary management mandate, had, from the very beginning, been vested with the powers, under the RBI Act, 1934, to regulate the volume and cost of bank credit in the economy through the instruments of general credit control, it was not until 1949 that a comprehensive enactment, applicable only to the banking sector,

came into existence. The Banking Regulation Act from March 1966. The Act vested in the Reserve Bank the responsibility relating to licensing of banks, branch expansion, and liquidity of their assets, management and methods of working, amalgamation, reconstruction and liquidation. Important changes in several provisions of the Act were made from time to time, designed to enlarge or amplify the responsibilities of the RBI or to impart flexibility to the relative provisions, commensurate with the imperatives of the banking sector developments.

Branch Authorization Policy

The RBI announced a new Branch Authorisation Policy in September 2005 under which certain changes were brought about in the authorisation process adopted by the RBI for the bank branches in the country.

As against the earlier system, where the banks approached the RBI, piece meal, throughout the year for branch authorisation, the revised system provides for a holistic and streamlined approach for the purpose, by granting a bank-wise, annual aggregated authorisation, in consultation and interaction with each applicant bank. The objective is to ensure that the banks take an integrated view of their branch- network needs, including branch relocations, mergers, conversions and closures as well as setting up of the ATMs, over a one-year time horizon, in tune with their own business strategy, and then approach the RBI for consolidate annual authorizations accordingly.

Operations of Foreign Banks in India

At present, there are 29 foreign banks operating in India with a network of 273 branches and 871 off-site ATMs. Among some circles, a doubt is sometimes expressed as to whether the regulatory environment in India is liberal in regard to the functioning of the foreign banks and whether the regulatory approach towards foreign participation in the Indian banking system is consistent with liberalized environment. Undoubtedly, the facts indicate that regulatory regime followed by the Reserve Bank in respect of foreign banks is nondiscriminatory, and is, in fact, very liberal by global standards. Here are a few facts which bear out the contention; India issues a single class of banking licence to foreign banks and does not require them to graduate from a lower to a higher category of banking licence over a number of years, as is the practice followed in certain other jurisdictions. This single class of licence places them virtually on the same footing as an Indian bank and does not place any restrictions on the scope of their operations. Thus, a foreign bank can undertake, from the very first day of its operations, any or all of the activities permitted to an Indian bank and all foreign banks can carry on both retail as well as wholesale banking business. This is in contrast with practices in many other countries.

No restrictions have been placed on establishment of non-banking financial subsidiaries in India by the foreign banks or of their group companies. Deposit insurance cover is uniformly available to all foreign banks at a non-discriminatory rate of premium. In many other countries there is a discriminatory regime.

The prudential norms applicable to the foreign banks for capital adequacy, income recognition and asset classification, etc., are, by and large, the same as for the Indian banks. Other prudential norms such as those for the exposure limits, investment valuation, etc., are the same as those applicable to the Indian banks.

Unlike some of the countries where overall exposure limits have been placed on the foreign-country related business, India has not placed any restriction on the kind of business that can be routed through the branches of foreign banks. This has been advantageous to the foreign bank branches as the entire home-country business is generally routed through these branches.

Substantial FII business is also handled exclusively by the foreign banks. In fact, some Indian banks contend that certain amount of positive discrimination exists in favour of foreign banks by way of lower Priority

Sector lending requirement at 32 per cent of the adjusted net bank credit as against a level of 40 per cent required for the Indian banks. Unlike in the case of Indian banks, the sub-ceiling in respect of agricultural advances is also not applicable to foreign banks whereas export credit granted by the foreign banks can be reckoned towards priority sector lending obligation, which is not permitted for the Indian banks.

Notably, in terms of our WTO commitment, licences for new foreign banks may be denied when the share of foreign banks' assets in India, including both on- as well as off-balance-sheet items, in the total assets (including both on- and off-balance-sheet items) of the banking system exceeds 15 per cent. However, we have autonomously not invoked this limitation so far to deny licences to the new foreign banks even though the actual share of foreign banks in the total assets of the banking system, including both on- and off-balance-sheet items (on Notional Principal basis), has been far above the limit. This share of foreign banks stood at 49 per cent, as at end-January 2007, as mentioned in the India's Trade Policy Review, 2007 Securitisation Guidelines of the RBI.

The RBI had first issued the draft guidelines for securitisation of standard assets in April 2005, for public comments and after an extensive consultative process; the final guidelines were issued in February 2006, in order to facilitate an orderly development of this market. In certain quarters, however, a view has been expressed that these guidelines, tend to negate the benefits envisaged in the very concept of securitisation, and thus, are hindering the growth of securitisation market in the country. Let me attempt to briefly present today the international perspective vis-à-vis RBI guidelines and the thinking and rationale underlying our formulation.

LEGAL & REGULATORY ASPECTS OF BANKING

Legal Aspects of Banking Operations: Case laws on responsibility of paying / collecting banker Indemnities / guarantees - scope and application - obligations of a banker - precautions and rights-laws relating to bill finance, LC and Deferred Payments -Laws relating to securities -valuation of securities -modes of charging securities -lien, pledge, mortgage, hypothecation etc. -registration of firms

Introduction

LEGAL FRAMEWORK OF REGULATION OF BANKS

The Urban Banks Department of the Reserve Bank of India is vested with the responsibility of regulating and supervising primary (urban) cooperative banks, which are popularly known as Urban Cooperative Banks (UCBs).

While overseeing the activities of 1926 primary (urban) cooperative banks, the Urban Banks Department performs three main functions : regulatory, supervisory and developmental. The Department performs these functions through its 17 regional offices.

I. Regulatory Functions

(i) Licensing of New Primary (Urban) Cooperative Banks

For commencing banking business, a primary (urban) cooperative bank, as in the case of commercial bank, is required to obtain a licence from the Reserve Bank of India, under the provisions of Section 22 of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies).

(ii) Licensing of Existing Primary (Urban) Co-operative Banks

In terms of sub-section (2) of Section 22 of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies), the primary (urban) cooperative banks existing in the country as on March 1, 1966, (when some banking laws were applied to UCBs), were required to apply to the Reserve Bank of India. They were given three months to obtain a licence to carry on banking business. Similarly, a primary credit society which becomes a primary (urban) cooperative bank by virtue of its share capital and reserves reaching Rs. one lakh (Rs.1,00,000) and above was to apply to the Reserve Bank of India for a licence within three months from the date on which its share capital and reserves reach Rs. one lakh. The existing unlicensed primary (urban) cooperative banks can carry on banking business till they are refused a licence by the Reserve Bank of India.

(iii) Branch Licensing

Under the provisions of Section 23 of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies), primary (urban) cooperative banks are required to obtain permission from the Reserve Bank of India for opening branches.

(iv) Statutory Provisions

The regulatory functions of Urban Banks Department relate to monitoring compliance with the provisions of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies) by urban cooperative banks. These provisions include :

a. Minimum Share Capital

Under the provisions of Section 11 of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies), no primary (urban) cooperative bank can commence or carry on banking business if the real or exchangeable value of its paid-up capital and reserves is less than Rs.one lakh.

b. Maintenance of CRR and SLR

As in the case of commercial banks, primary (urban) cooperative banks are also required to maintain certain amount of cash reserve and liquid assets. The scheduled primary (urban) cooperative banks are required to maintain with the Reserve Bank of India an average daily balance, the amount of which should not be less than 5 per cent of their net demand and time liabilities in India in terms of Section 42 of the Reserve Bank of India Act, 1934. Non-scheduled (urban) cooperative banks, under the provision of Section 18 of Banking Regulation Act, 1949 (As Applicable to Cooperative Societies) should maintain a sum equivalent to at least 3 per cent of their total demand and time liabilities in India on day-to-day basis. For scheduled cooperative banks, CRR is required to be maintained in accounts with Reserve Bank of India, whereas for non-scheduled cooperative banks, it can be maintained by way of either cash with themselves or in the form of balances in a current account with the Reserve Bank of India or the state co-operative bank of the state concerned or the central cooperative bank of the district concerned or by way of net balances in current accounts with public sector banks. In addition to the cash reserve, every primary (urban) cooperative bank (scheduled/non-scheduled) is required to maintain liquid assets in the form of cash, gold or unencumbered approved securities which should not be less than 25 per cent of the total of its demand and time liabilities in accordance with the provisions of Section 24 of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies). Out of the prescribed SLR, the UCBs have been advised to maintain a certain amount in the form of SLR Securities as under :

Sr.No.	Category of bank	Minimum SLR holding in Government and other approved securities as percentage of Net Demand and Time Liabilities (NDTL)
1.	Scheduled banks	25%
2.	Non-Scheduled banks	
	a) with NDTL of Rs.25 crore & above	15%
	b) with NDTL of less than Rs.25 crore	10%

II. Supervisory Functions

To ensure that the UCBs conduct their affairs in the interests of the depositors and also comply with the regulatory framework prescribed by the Reserve Bank of India, the department undertakes on site inspection of these banks with frequency ranging from one to two years depending upon the financial condition / status of banks. The thrust of supervision is to ensure that banks' affairs are not conducted in a manner detrimental to the depositors' interest and also to assess the solvency of the bank vis-à-vis its liabilities, besides examining the banks' compliance with the existing regulatory framework. The department also undertakes off-site surveillance of scheduled banks and non-scheduled banks with a deposit base of Rs 100 crore and above based on a set of quarterly and annual returns.

III. Developmental Functions

With a view to extending institutional credit support to tiny and cottage units, the Reserve Bank of India grants refinance facilities to urban cooperative banks under the provisions of Section 17 of the Reserve Bank of India Act, 1934. The refinance is given at the Bank Rate.

Training is imparted to the middle and top management of urban cooperative banks through College of Agricultural Banking, Pune.

IV. Sections / Divisions of Urban Banks Department

1. Administration

This Section handles staff matters of the department.

2. New Bank Licensing and Branch Licensing

This section frames policies for issue of bank licence /allots centres for opening of branches and authorizes regional offices to take action accordingly. It also deals with conversion of cooperative credit societies into urban banks.

3. Returns

Returns section at each of the regional offices is responsible for monitoring receipt of various statutory returns under the provisions of Banking Regulation Act, 1949, (AACS) and Sec 42 of Reserve Bank of India Act 1934 in case of scheduled UCBs. They also verify compliance with the provisions of the Acts, *ibid*, and take suitable action against non-compliant UCBs.

4. Banks Supervision

This division arranges inspection of urban cooperative banks through regional offices and closely monitors the action taken by the UCBs to rectify the irregularities / deficiencies pointed out in inspection reports. The division also associates itself with the RCS of respective states in rehabilitation of financially weak UCBs.

5. Banking Policy

This section frames policies on prudential norms, investment policies, monitoring priority sector targets, refinancing, issue of directives on interest rates, CRR/SLR, etc. Policies relating to para banking activities such as merchant banking, hire purchase, leasing, insurance business, etc. are also formulated by this division. Besides, the section also attends to compliance with the directions of Local Board / Central Board / BFS, furnishes requisite material for Bank's publications such as Annual Report, Report on Trend and Progress of Banking in India, Currency and Finance, etc.

Further, the section interprets the provisions of Banking Regulation Act 1949 (BRS), initiates amendments, coordinates with the Government, corresponds with various State Governments on matters pertaining to amendments of State Cooperative Societies Acts, coordinates with DICGC on matters pertaining to banks under liquidation, maintains and updates the list of urban cooperative banks, monitors cooperative credit societies having paid up capital above Rs one lakh, watches compliance to Sec 9, 29 & 31 of Banking Regulation Act, attends to cooperative banks going out of the purview of Banking Regulation Act etc.

Characteristics of Urban Cooperative Banks

- Registered under State Cooperative Societies Acts
- No controlling interest since the board of management it is elected by shareholders in a democratic manner
- One member one vote irrespective of number of shares held by a member
- Duality of command – RCS / CRCS and RBI
- Borrowing restricted to members
- Restricted area of operation
- Share linking to borrowing
- No listing g / no trading of shares
- Strong in helping financially weaker section
- Regulatory Supervisory Operational and Regulatory, Supervisory, Operational and Developmental Functions (g Carried out through the Urban Banks Department)
- RBI derives authority to control and supervise the urban banks through the Banking Reg , (pp ulation Act, 1949 (As Applicable to Cooperative societies)

BANKING REGULATION ACT, 1949

PART 1 :- PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Banking 2[Regulation] Act, 1949.

3[(2) It extends to the whole of India 4[* * *]

(3) It shall come into force on such date⁵ as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Application of other laws not barred

The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the 6[Companies Act, 1956 (1 of 1956)], and any other law for the time being in force.

7[3. Act to apply to co-operative societies in certain cases

Nothing in this Act shall apply to-

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V.]

4. Power to suspend operation of Act

(1) The Central Government, if on a representation made by the Reserve Bank in this behalf it is satisfied that it is expedient so to do, may by notification in the Official Gazette, suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf may, by order in writing, exercise the powers of the Central Government under sub-section (1) so however that the period of suspension shall not exceed thirty days, and where the Governor or the Deputy Governor, as the case may be, does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the Gazette of India.

(3) The Central Government may, by notification in the Official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub-section (2) for

such period, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year.

(4). A copy of any notification issued under sub-section (3) shall be laid on the table of 8[Parliament] as soon as may be after it is issued.

5. Interpretation

9[In this Act], unless there is anything repugnant in the subject or context,-

10[(a) "approved securities" means-

(i) securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trust Act, 1882 (2 of 1882);

(ii) such of the securities authorised by the Central Government under clause (f) of section 20 of the Indian Trust Act, 1882 (2 of 1882), as may be prescribed];

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

(c) "banking company" means any company which transacts the business of banking 11[in India];

Explanation: Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

12[(ca) "banking policy" means any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources;]

13[(CC) "branch" or "branch office", in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 35 includes any place of business where any other form of business referred to in sub-section (1) of section 6 is transacted;]

14[(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;]

15[(da) "corresponding new bank" means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970

(5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);]

(e) 16[***]

(f) "demand liabilities" means liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities;

17[(ff) "Deposit Insurance Corporation" means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961);]

15[(ffa) "Development Bank" means the Industrial Development Bank of India established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);]

(ffb) "Exim Bank" means Export-Import Bank of India established under section 3 of the Export-Import Bank of India Act, 1981 (28 of 1981);]

18[(ffc) "Reconstruction Bank" means the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984);]

19[(ffd) "National Housing Bank" means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;]

(g) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

12[(gg) "managing agent" includes-

(i) secretaries and treasurers,

(ii) where the managing agent is a company, any director of such company, and any member thereof who holds substantial interest in such company,

(iii) where the managing agent is a firm, any partner of such firm;]

14[(h) "managing director", in relation to a banking company, means a Director who, by virtue of agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a Director occupying the position of a Managing Director, by whatever name called:]

20[PROVIDED that the Managing Director shall exercise his powers subject to the superintendence, control and direction of the Board of Directors;]

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21[(ha) "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 (61 of 1981);]

(i) 22[* * *1

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

21[(ja) "regional rural bank" means a regional rural bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);]

(k) 23[* * *]

10[(l) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);]

(m) 24[* * *]

(n) "secured loan or advances" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and "unsecured loan or advance" means a loan or advance not so secured;

27[(ni) "Small Industries Bank" means the Small Industries Development Bank of India established under s. 3 of the Small Industries Development Bank of India Act, 1989;]

12[(na) "small-scale industrial concern" means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakh of rupees or such higher amount, not exceeding twenty lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors;]

15[(nb) "Sponsor Bank" has the meaning assigned to it in the Regional Rural Banks Act, 1976 (21 of 1976);]

(nc) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);]

26[(nd)] "subsidiary bank" has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

27[(ne)] "substantial interest:-

(i) in relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together in the shares thereof, the amount paid-up on which exceeds five lakhs of rupees or ten per cent of the paid-up capital of the company, whichever is less;

(ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent of the total capital subscribed by all the partners of the said firm;

28[(o) all other words and expressions used herein but not defined and defined in the Companies Act, 1956 (1 of 1956), shall have the meanings respectively assigned to them in that Act.]

(2) 29[***]

28[5A. Act to override memorandum, articles, etc.
Save as otherwise expressly provided in this Act,

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959); and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

BANKING REGULATION ACT, 1949

PART II :- BUSINESS OF BANKING COMPANIES

6. Form and 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; and drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bill 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, travellers' 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 loan and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe

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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 30[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 pension and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent object 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 purpose 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) 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).

⁹[7. Use of words "bank", "banker", "banking" or "banking company"

(1) No company other than a banking company shall use as part of its name 15[or, in connection 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-

(a) 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;

(b) 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).]

8. 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 realization 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:

10[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.]

Explanation: For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stock, shares, money, bullion and specie and all

instruments referred to in clause (a) of sub-section (1) of section 6.

9. 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.

31[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-

(i) 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

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

14[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]

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

(c) shall be managed by any person-

14[(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) who is engaged in any other business or vocation; or

(iii) 9[whose term of office as a person managing the company is] for a period exceeding five years at any one time:

32[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 or 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 a persons 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 reimbursing him in respect of the expenses 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

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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.

(3) 33[***]

(4) 33[***]

(5) 33[***]

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

34[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, or

(b) which comes into existence thereafter,

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,-

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- (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, 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) any company, not being a company 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.

15[(2A) Notwithstanding 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 may be.]

(3) If, in respect of any banking company, the requirements, as laid down in sub-section (2), are not fulfilled at any time, the Board of Directors of such banking company shall re-constitute 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.

(5) 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 sub-section (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 such banking company and with a view to complying with provisions 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 Director 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 whole-time Chairman

35[(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, 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) 35[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 to 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 provision of this section, be eligible for re-election or re-appointment:

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) 35[Every Chairman who is appointed on a whole-time basis and every Managing Director of a banking company appointed under sub-section (1A)] shall be a 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 35[Chairman who is appointed on a whole-time basis or a Managing Director], if he-

(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) 35[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 36[* * *].

37[(5A) 35[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 or by reason of expiry of the period of this office, shall, subject to the approval of the Reserve Bank, continue in office until his successor assumes office.]

(6) 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 35[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 35[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 35[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 35[Chairman of the Board of Directors who is appointed on a whole-time basis or a 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 35[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 appointed as Chairman under this sub-section shall hold office for the residue of the period of the person in whose place he has been so elected or appointed.

(7) 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.

(8) 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 the 35[Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director] to undertake such part-time honorary work as is not likely to interfere with his duties as 35[such Chairman or Managing Director.]

(9) Notwithstanding anything contained in this section, where a person 35[appointed on a whole-time basis, as Chairman of the Board of Directors or Managing Director] dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or other wise 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 35[duties of Chairman or Managing Director] for a total period not exceeding four months

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15[10BB. Power of Reserve Bank to appoint Chairman of a banking company

(1) Where the office of the 35[Chairman of the Board of Directors appointed on a whole-time basis or the 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 35[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 35[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director], be deemed to be a Director of the banking company.

(2) The 35[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 re-appointment.

(3) The 35[Chairman of the Board of Directors who is 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.

(4) Save as otherwise provided in this section, the provisions of section 10B shall, as far as may be, apply to the 35[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] appointed by the Reserve Bank under sub-section (1) as they apply to a 35[Chairman of the Board of Directors appointed on a whole-time basis or the Managing Director] appointed by the banking company.]

10[10C. Chairman and certain Directors not to be required to hold qualification shares
35[A 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 35[Director, Chairman of the Board of Directors who is appointed on a whole-time basis or Managing Director] in pursuance of section 10A or section 10B 10[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 or associations

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

(1) Notwithstanding anything contained in 38[section 149 of the Companies Act, 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 business 11[in India], and no other banking company shall, after the commencement of this Act, commence or carry on business 11[in India], 14[unless it complies with such of the requirements of this section as are applicable to it.]

14[(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) 39[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 40[***] year, an amount calculated at twenty per cent 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 section 29:]

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.]

41[(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 lakh 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:

41[PROVIDED FURTHER that in the case of every banking company to which this 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;]

(iii) if it has all its places of business in one State, 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 may be:

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 42[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 under 43[*subsection (2) by any banking company incorporated 44[outside India] shall, in the event of the company ceasing for any reason to carry on banking business 11 [in India], be an asset of the company on which the claims of all the creditors of the company 11[in India] shall be a first charge.

14[(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.

31[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;

(ii) that the capital of the company consists of ordinary shares only or of ordinary shares or equity shares and such preferential shares as may have been issued prior to the 1st day of July, 1944:

PROVIDED that nothing contained in this sub-section shall apply to any banking company incorporated before the 15th day of January, 1937.

(2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights 28[on poll] 45[in excess of 46[ten per cent]] of the total voting rights of all the shareholders of the banking company.

(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 shares 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 may be specified in the order.]

47[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.].

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

Notwithstanding anything to the contrary contained in 48[sections 76 and 79 of the Companies Act, 1956 (1 of 1956)]1, 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 per cent of the paid-up value of the said 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.

28[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 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

49[(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.

28[(2) Notwithstanding 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;

(ii) 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;

(iii) 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.]

31[16. Prohibition of common Directors

35[(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 share-holders of that banking company.

(2) If immediately before 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 per cent 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.]

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

14[17. Reserve Fund

(1) Every banking company incorporated in India shall create a reserve fund and 50[* **] 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.

41[(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 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.

51[18. Cash reserve

(1) Every banking company, not being a scheduled bank, shall maintain in India 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 at least three per cent of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the twentieth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Friday 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 or from the Development Bank or from the Exim Bank 52[or from the Reconstruction Bank] 19[or from the National Housing Bank] or from the National Bank 82[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 balance in current account maintained by that banking company with the 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;

(d) for the purpose of computation of liabilities, the aggregate of the liabilities of banking company to the State Bank 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;

(e) the expression "Co-operative Bank" shall have the meaning assigned to it in clause (cci) of section 56.

(2) The Reserve Bank may, for the purpose 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 transaction 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

10[(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 clause (a) to (o) of sub-section (1) 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 purpose 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 under reserves, whichever is less:

PROVIDED that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor 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 pledge, mortgagee 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.

53[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 15[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

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(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 sub-section, 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) "loan 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" includes 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.]

54[20A. Restrictions on power to remit debts

(1) 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 86[or in the interests of depositors] 12[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.

(2) 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 particulars, 9[as to-

(a) 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 or 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.]

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

15[21A. Rate 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 reopened 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

14[(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 to 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 11 [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 55[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 be 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 Bank may require to be satisfied by an inspection of the books of the company or otherwise that 56^{***} the following conditions are fulfilled, namely:-

14[(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 interests of its present or future depositors;]

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

(g) any other condition, the fulfillment 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.]

15[(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.]

14[(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) 15 [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, and 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.

(6) 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.]

14[23. Restrictions on opening of new, and transfer of existing, places of business

(1) Without obtaining the prior permissions 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.

(4) 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.

57[(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.]

(5) For the purposes 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.]

UNIT 4

Banking Related Laws: Law of limitation, Provisions of Bankers Book Evidence Act, Special features of Recovery of Debts Due to Banks and Financial Institutions Act, 1993

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(a) TDS, (b) Banking Cash Transaction tax, (c) Service Tax, (d) Asset Reconstruction Companies. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(a) The Consumer Protection Act, 1986, (b) Banking Ombudsman, (c) Lok Adalats, (d) Lender's Liability Act

Introduction

Part 1 – Preliminary

1. Short title, extent and commencement -

1. This Act may be called the Limitation Act, 1963.

2. It extends to the whole of India except the State of Jammu and Kashmir.

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

2. Definitions:-

In this Act, unless the context otherwise requires.

(a) "applicant" includes

(i) petitioner;

(ii) any person from or through whom an applicant derives his right to apply;

(iii) any person whose estate is represented by the applicant as executor, administrator or other representative;

(b) "application" includes a petitions;

(c) "bill of exchange" includes a hundi and a cheque;

(d) "bond" includes any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed as the case may be;

(e) "defendant" includes

(i) any person from or through whom a defendant derives his liability to be sued;

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(ii) any person whose estate is represented by the defendant as executor, administrator or other representative;

(f) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon the land of another;

(g) "foreign country" means any country other than India;

(h) "good faith" nothing shall be deemed to be done in good faith which is not done with due care and attention;

(i) "plaintiff" includes

(i) any person from or through whom a plaintiff derives his right to sue; (ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative;

(j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;

(k) "promissory-note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at time therein limited, or on demand, or at sight;

(l) "suit" does not include an appeal or an application;

(m) "tort" means a civil wrong which is not exclusively the breach of a contract or the breach of trust;

(n) "trustee" does not include a benamidar, a mortgage remaining in possession after the mortgage has been satisfied, or a person in a wrongful possession without title.

Part 3 – Limitation of Suits, Appeals and Applications

3. Bar of limitation

(1) Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defense;

(1) For the purposes of this Act,

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(a) A suit is instituted,

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set-off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set-off, on the same date as the suit in which the set off is pleaded;

(ii) in the case a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court

4. Expiry of prescribed period when court is closed -

When 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 reopens.

Explanation – A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

5. Extension of prescribed period in certain cases -

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation – The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section

6. Legal disability -

Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or

insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up-to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation – For the purposes of this section ‘minor’ includes a child in the womb.

Notes – This section corresponds with section 6 of the old Act with some changes.

7. Disability of one of several persons -

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I – This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

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Explanation II – For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint-family property.

8. Special exceptions -

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby the period of limitation for any suit or application.

9. Continuous running of time –

Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

10. Suits against trustees and their representatives -

Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof or for an account of such property or proceeds, shall be barred by any length of time.

Explanation – For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.

11. Suits on contracts entered into outside the territories to which the Act extends –

(1) Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be governed by the rules of limitation contained in this Act.

(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defense to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless -

(a) the rule has extinguished the contract; and

(b) the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.

Part 3 – Computation of Period of Limitation

12. Exclusion of time in legal proceedings -

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or when an application is made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation – In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for copy thereof is made shall not be excluded.

13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for -

In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court-fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court-fees had been paid in the first instance.

14. Exclusion of time of proceeding bona fide in court without jurisdiction -

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first

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instance or of the appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court of other cause of a like nature.

Explanation – For the purpose of this section, -

(a) In excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) Plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) Misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Related Judgements

FERRO ALLOYS CORPORATION LTD. v. RAJHANS STEEL LTD.

15. Exclusion of time in certain other cases -

(1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

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(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation – In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

Related Judgements

FERRO ALLOYS CORPORATION LTD. v. RAJHANS STEEL LTD.

16. Effect of death on or before the accrual of the right to sue -

(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

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(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application.

(3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of preemption or to suit for the possession of immovable property or of a hereditary office.

17. Effect of fraud or mistake -

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act-

(a) The suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) The knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) The suit or application is for relief from the consequences of a mistake; or

(d) Where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

The period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, has discovered it, or in the case of concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against or set aside any transaction affecting, any property which-

(i) In the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

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(ii) In the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had

been made, or

(iii) In the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

18. Effect of acknowledgment in writing -

(1) 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 derived his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation – For the purposes of this section, -

(a) An acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) The word “signed” means signed either personally or by an agent duly Authorised in this behalf ; and

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(c) An application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

NOTES – It is not necessary that an acknowledgment within Section 18 must contain a promise pay or should amount to a promise to pay. (Subbarsadya v.Narashimha, AIR 1936 Mad.939)

The above section corresponds to S.19 of the old Act and makes slight changes.

19. Effect of payment on account of debt or of interest on legacy -

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 the debt or legacy or by his agent duly Authorised in this behalf, a fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January,1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by the person making the payment.

Explanation – For the purposes of this section, -

(a) Where mortgaged land is in the possession of the mortgage, the receipt of the rent of produce of such land be deemed to be a payment;

(b) “Debt” does not include money payable under a decree or order of a court.

Related Judgements

FERRO ALLOYS CORPORATION LTD. v. RAJHANS STEEL LTD.

20. Effect of acknowledgment or payment by another person -

(1) The expression “agent duly Authorised in this behalf” in sections 18 and 19 shall in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly Authorised by such guardian, committee or manager to sign the acknowledgment or make the payment. (2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgages chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

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(3) For the purposes of the said sections, -

(a) an acknowledgment signed or a payment made in respect of any liability by, or by the duly Authorised agent of, any limited owner of property who is governed by Hindu Law, shall be a valid acknowledgment or payment, as the case may be, against a reversionary succeeding to such liability; and

where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly Authorised agent or, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

21. Effect of substituting or adding new plaintiff or defendant -

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was made a party:

Provided that were the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the tendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

22. Continuing breaches and torts -

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation beings to run at every moment of the time during the breach or the tort, as the case may be, continues.

23. Suits for compensation for acts not actionable without special damage -

In the case of suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results there from, the period of limitation shall be computed from the time when the injury results.

24. Computation of time mentioned in instrument -

All instruments shall for purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Part 4 – Acquisition of ownership by possession

25. Acquisition of easement by prescription -

(1) Where the access and use of light or air to and for any building have been peaceably enjoyed there with as an easement, and as of right, without interruption and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of other easement shall be absolute and indefeasible.

(2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein claim to which such period relates is contested.

(3) Where property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words “twenty years” the words “thirty years” were substituted.

Explanation – Nothing is an interruption within the meaning of the section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

26. Exclusion in favour of reversionary of servant tenement -

Where any land or water upon, over or from, which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or in terms of years exceeding three years from the granting thereof the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled on such determination to the said land or water.

27. Extinguishments of right to property -

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Part 5 – Miscellaneous

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28. Amendment of Certain Acts. (Repealed)

29. Savings -

(1) Nothing in this Act, shall affect section 25 of the Indian Contract Act,1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any sit, appeal or application by any special or local law, the provisions contained in section 5 to 24 (inclusive shall apply only in so far, as and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act,1882 may for the time being extend.

30. Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act,1908 -

Notwithstanding anything contained in this Act, (a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act,1908, may be instituted within a period of (Note: Substituted for the words "five years" by Act No.10 of 1969) (Seven years) next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act,1908, whichever period expires earlier;

(Note: Substituted for the Words "five years" by Act No.10 of 1969)

[Provided that if in respect of any such suit, the said period of seven years expires earlier than the period of limitation prescribed therefore under the Indian Limitation Act,1908 and the said period of seven years together with so much of the period of limitation in repeat of such suit under the Indian Limitation Act,1908, as has already expired before the commencement of this Act is shorter than the period prescribed for such suit under this Act, then, the suit may be instituted within the period of limitation prescribed therefore under this Act].

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(b) any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act,1908, whichever period expires earlier.

31. Provision as to barred or pending suits, etc. -

Nothing in this Act shall,

(a) enable any suit, appeal or application to be instituted, preferred or made for which the period of limitation prescribed by the Indian Limitation Act,1908, expired before the commencement of this Act; or

(b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.

32. Repeal -

Rep. By the Repealing and Amending Act,1974 (56 of 1974), section 2 and Schedule I.

Schedule – Period of Limitations

Division I – Suits

PART I – Suits Relating to Accounts

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
1.	For the balance due on a mutual, open and current account where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
2.	Against a factor for an account	Three years	When the account is during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
3.	By a principal against his agent for movable property received	Three years	When the account is during the continuance of the agency,

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	by the latter and not accounted for.		demanded and refused or, where no such demand is made, when the agency terminates.
4.	Other suits by principals against agents for	Three years	When the neglect or misconduct becomes known to the plaintiff.
5.	For an account and a share of the profits of dissolved partnership	Three years	The date of the dissolution.

PART II – Suits relating to Contracts

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
6.	For a seaman's wages	Three years	The end of the voyage during which the wages are earned.
7.	For wages in the case of any other person.	Three years	When the wages accrue due.
8.	For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.	Three years	When the food or drink is delivered
9.	For the price of lodging	Three years	When the price becomes payable .
10.	Against a carrier for compensation for non-delivery of or delay in delivering goods.	Three years	When the loss or injury occurs.
11.	Against a carrier for compensation for losing or injuring goods.	Three years	When the goods ought to be delivered.

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12.	For the hire of animals, vehicles, boats or household furniture.	Three years	When the hire becomes payable.
13.	For the balance of money advance in payment of goods to be delivered.	Three years	When the goods ought to be delivered.
14.	For the price of goods sold and delivered when no fixed period of credit is agreed upon.	Three years	The date of delivery of the goods.
15.	For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years	When the period of credit expires.
16.	For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years	When the period of the proposed bill elapses.
17.	For the price of trees or growing crops sold by the plaintiff to the defendant where not fixed period of credit is agreed upon.	Three years	The date of the sale.
18.	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done.
19.	For money payable for money lent.	Three years	When the loan is made.
20.	Like suit when the lender has given a cheque for the money.	Three years	When the cheque is paid.

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21.	For money lent under an agreement that it shall be payable on demand.	Three years	When the loan is made.
22.	For money deposited under an agreement that it shall be payable on demanded, including money of a customer in the hands of his banker so payable.	Three years	When the demand is made.
23.	For money payable by the defendant to he plaintiff for money received by the defendant, for the plaintiff's use.	Three years	When the money is paid.
24.	For money payable to the plaintiff for money paid for the defendant.	Three years	When the money is received.
25.	For money payable for interest upon money due from the defendant to the plaintiff.	Three years	When the interest becomes due.
26.	For money payable to the plaintiff for money found to be due from the fedendant to the plaintiff on accounts stated between them	Three years	When the accounts are stated in writing signed by the defendant or his agent duly Authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid made payment at a future time, and then when that time arrives.

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27.	For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years	When the time specified arrives or the contingency happens.
28.	On a single bond where a day is specified for payment	Three years	The day so specified.
29.	On a single bond, where no such day is specified.	Three years	The date of executing the bond.
30.	On a bond subject to a condition	Three years	When the condition is broken.
31.	On a bill of exchange or promissory-note payable at a fixed time after date.	Three years	When the bill or note falls due.
32.	On a bill of exchange payable at sight, or after sight but not at a fixed time.	Three years	When the bill is presented.
33.	On a bill of exchange accepted payable at a particular place.	Three years	When the bill is presented at that place.
34.	On a bill of exchange or promissory-note payable at a fixed time after sight or after demand.	Three years	When the fixed time expires.
35.	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.

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36.	On a promissory-note or bond payable by installments.	Three years	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
37.	On a promissory-note or bond payable by installments which provides that, if default be made in payment of one or more installments, the whole shall be due.	Three years	When the default is made unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.
38.	On a promissory-note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years	The date of the delivery to the payee.
39.	On a dishonored foreign bill where protest have been made and notice given.	Three years	When the notice is given.
40.	By the payee against the drawer of a bill of exchange, which has been dishonored by non-acceptance.	Three years	The date of refusal to accept.
41.	By the acceptor of an accommodation-bill against the drawer.	Three years	When the acceptor pays.
42.	By a surety against the principal debtor.	Three years	When the surety pays the creditor.

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43.	By a survey against a crusty.	Three years	When the surety pays anything in excess of his own share.
44. (a)	On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years	The date of the death of the deceased, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
44. (b)	On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years	The date of the occurrence causing the loss, or where the claim on the policy is denied either partly or wholly, the date of such denial.
45.	By the assured to recover preemie paid under a policy violable at the election of the insurers.	Three years	When the insurers elect to avoid the policy.
46.	Under the Indian Succession Act, 1925 (39 of 1925), section 360 of Sec. 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years	The date of the payment or distribution.
47.	For money paid upon on existing consideration which afterwards fails.	Three years	The date of failure.
48.	For contribution by a party who has paid the whole or more than his share of the amount due under a joined decree, or by a sharer in a joint estate who has	Three years	The date of the payment in excess of the plaintiff's own share.

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	paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.		
49.	By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years	When the right to contribution accrues.
50.	By the manager of joint estate of an undivided family for contribution, in respect of payment made by him on account of the estate.	Three years	The date of the payment.
51.	For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years	When the profits are received.
52.	For arrears of rent.	Three years	When the arrears become due.
53.	By a vendor of immovable property for personal payment of up-paid purchase money.	Three years	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
54.	For specific performance of a contract.	Three years	The date of fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
55.	For compensation for the breach of any contract, express or implied, not herein specially provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is

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61.	(a) to redeem or recover, possession of immovable property mortgaged;	Thirty years	When the right to redeem or to recover possession accrues.
	(b) to recover possession of immovable property mortgaged and afterwards transferred by the mortgage for a valuable consideration.	Twelve years	When the transfer becomes known to plaintiff.
	(c) to recover surplus collection received by the mortgage after the mortgage has been satisfied.	Three years	When the mortgagor reenters on the mortgaged property.

PART V – Suits relating to Immovable Property

62.	To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due.
63.	By a mortgage		
	(a) for foreclosure;	Thirty years	When the money secured by the mortgage becomes due.
	(b) for possession of immovable property mortgaged.	Twelve years	When the mortgage becomes entitled to possession.
64.	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

<p>Explanation – for the purposes of this article -</p>		
<p>(a) Where the suit is by a remainder-man, a reversionary (other than a landlord); or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversionary or devisee, as the case may be falls into possession;</p>		
<p>(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female the possession of the defendant shall be deemed to become adverse only when the female dies.</p>		
<p>(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.</p>		
<p>66. For possession of immovable property when the plaintiff has become entitled to possession</p>	<p>Twelve years</p>	<p>When the forfeiture is incurred or the condition is broken.</p>

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	by reason of any forfeiture or breach of condition.		
67.	By a landlord to recover possession from a tenant.	Twelve years	When the tenancy is determined.

PART VI – Suits relating to movable property

68.	For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
69.	For other specific movable property.	Three years	When the property is wrongfully taken.
70.	To recover movable property deposited or pawned from a depositary or pawnee.	Three years	The date of refusal after demand.
71.	To recover movable property deposited or pawned, and afterwards brought from the deposited or pawned, and afterwards brought from the depositary or pawnee for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.

PART VII – Suits relating to torts

72.	For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.	One year	When the act or omission takes place.
73.	For compensations for false imprisonment.	One year	When the imprisonment ends.
74.	For compensation for malicious prosecution.	One year	When the plaintiff is acquitted or the prosecution is otherwise terminated.
75.	For compensation for libel.	One year	When the libel is published.

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76.	For compensation for slander.	One year	When the words are spoken or if the words are not actionable in themselves, when the special damage complained of results.
77.	For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year	When the loss occurs.
78.	For compensation for inducing a person to break a contract with the plaintiff.	One year	The date of the breach.
79.	For compensation for an illegal, irregular or excessive distress.	One year	The date of the distress.
80.	For compensation for wrongful seizure or movable property under legal process.	One year	The date of the seizure.
81.	By executors, administrators or representatives under the Legal Representatives Suits Act, 1855.	One year	The date of the death of the person wronged.
82.	By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	Two years	The date of the death of the person killed.
83.	Under the Legal Representative Suits Act, 1855 against an executor, and administrator or any other representative.	Two years	When the wrong complained of is done.
84.	Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years	When the perversion first becomes known to the person injured thereby.
85.	For compensation for obstructing a way or a water course.	Three years	The date of the obstruction.
86.	For compensation for diverting a water course.	Three years	The date of the diversion.
87.	For compensation for trespass upon immovable property.	Three years	The date of the trespass.
88.	For compensation for infringing copyright or any other exclusive privilege.	Three years	The date of the infringement.

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89.	To restrain waste.	Three years	When the waste begins.
90.	For compensation for injury caused by an injunction wrongfully obtained.	Three years	When the injunction ceases.
91.	For compensation -		
	(a) for wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
	(b) for wrongfully taking or injuring or wrongfully detaining any other specific movable property.	Three years	When the property is wrongfully taken or injured, or when the detainee's possession becomes unlawful.

PART VIII – Suits relating to trust and trust property

92.	To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
93.	To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Three years	When the transfer becomes known to the plaintiff.
94.	To set aside a transfer to immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
95.	To set aside a transfer of movable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years	When the transfer, becomes known to the plaintiff.
96.	By the manager of a Hindu, Muslim and Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years	The date of death, resignation or removal of the transfer or the date of appointment of the plaintiff as manager of the endowment, whichever is later.

PART IX – Suits relating to miscellaneous matters

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97.	To enforce a right of preemption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instruments of sale is registered.
98.	By a person against whom an order referred to R.63 or rule 103 of Order XXI of the Code of Civil Procedure, 1908 or an order under section 28 of the Presidency Small Cause Courts Act, 1882 has been made, to establish the right which he claims o the property comprised in the order.	One year	The date of the final order.
99.	To set aside a sale by a civil or revenue court or a sale for arrears of Government revenue or for any demand recoverable as such arrears.	One year	When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought.
100.	To alter or set aside any decision r order of a civil court any proceeding other than a suit of any act or order of an officer of Government in his official capacity.	One year	The date of the final decision or order by the court or the date of the act or order of the officer, as the case may.

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101.	Upon a judgment including a foreign judgment, or a recognizance.	Three years	The date of the judgment or recognisance.
102.	For property which the plaintiff has conveyed while insane.	Three years	When the plaintiff is restored to sanity and has knowledge of the conveyance.
103.	To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years	The date of the trustee's death or if the loss has not then resulted, the date of the loss.
104.	To establish a periodically recurring right.	Three years	When the plaintiff is first refused the enjoyment for the right.
105.	By a Hindu for arrears of maintenance.	Three years	When the arrears are payable.
106.	For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate against an executor or an administrator or an administrator or some other person legally charged with the duty of distributing the estate.	Twelve years	When the legacy or share becomes payable or deliverable.
107.	For possession of a hereditary office.Explanation – A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.	Twelve years	When the defendant takes possession of the office adversely to the plaintiff.

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108.	Suit during the life of a Hindu r Muslim female by a Hindu or Muslim who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Twelve years	The date of the alienation.
109.	By Hindu governed by Mitakshara Law to set aside his father's alienation or ancestral property.	Twelve years	When the Aileen takes possession of the property.
110.	By a person excluded from a joint-family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.
111.	By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years	The date of the dispossession or discontinuance.
112.	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government, or any State Government including the Government of the State of Jammu and Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

PART X – Suits for which there is no prescribed period

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113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.
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Division II

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
114.	Appeal from an order of acquittal, -		
	(a) under sub-section (1) or sub-section (2) of section 417 of the Code of Criminal Procedure,1898;	Ninety days	The date of the order appealed from.
	(b) under sub-section (3) of Section 417 of the that Code.	Thirty days	The date of the grant of Special leave.
115.	Under Code of Criminal Procedure,1898		
	(a) From a sentence of death passed by a court of section or by a High Court in the exercise of its original Criminal Jurisdiction.	Thirty days	The date of the sentence
	(b) From any other sentence or any order not being an order of acquittal -		
	(i) to the High Court	Sixty days	The date of the sentence or order.
	(ii) to any other Court	Thirty days	The date of the sentence or order.
116.	Under the Code of Civil Procedure,1908		

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	(a) To a High Court from any decree or order;	Ninety days	The date of the decree or order.
	(b) To any other court from any decree or order.	Thirty days	The date of the decree or order.
117.	From a decree or order of any High Court to the same Court.	Thirty days	The date of the decree or order.

Division III – Applications

PART I

SL.NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
118.	For leave to appear and defend a suit under summary procedure.	Ten days	When the summons is served.
119.	Under the Arbitration Act,1940		
	(a) For the filing in court of an award;	Thirty days	The date of service of the notice of the making of the award;
	(b) For setting aside an award or getting an award remitted for reconsideration.	Thirty days	The date of the service of the notice of the filing of the award.
120.	Under the Code of Civil Procedure,1908, to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Ninety days	The date of the death of the plaintiff, appellant, defendant or respondent, as the case may be;
121.	Under the same Code for an order to set aside an abatement.	Sixty days	The date of abatement.
122.	To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal.
123.	To set aside a decree passed ex prate or to rehear an appeal decree or head ex prate.Explanation – For the purpose of this article, substituted service under rule 20 of	Thirty days	The date of the decree or where the summons or notice was not duly served when the

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	Order V of the Code of Civil Procedure, 1908 shall not be deemed to be due service.		applicant had knowledge of the decree.
124.	For a review of judgment by a court other than the Supreme Court.	Thirty days	The date of the decree or order.
125.	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126.	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127.	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Thirty days	The date of the sale.
128.	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129.	For possession after removing resistance or obstruction of delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
130.	For leave to appeal as a pauper -		
	(a) To the High Court;	Sixty days	The date of decree appealed from.
	(b) To any other Court;	Thirty days	The date of decree appealed from.
131.	To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1898.	Ninety days	The date of the decree or order of sentence sought to be revised.
132.	To the High Court for a certificate of fitness to appeal to the Supreme Court under Clause (1) of Article 132, Article 133 or sub-clause (c) of clause (e) of Article 134 of the Constitution or under any other law for the time being in force.	Sixty days	The date of the order or sentence.
133.	To the Supreme Court for Special leave to appeal,		
	(a) In a case involving death sentence;	Sixty days	The date of the judgment, final order or sentence.

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	(b) In a case where leave to appeal was refused by the High Court;	Sixty days	The date of the order of refusal.
	(c) In any other case.	Ninety days	When date of the judgment or order.
134.	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135.	For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.
136.	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring period, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

PART II

Other applications

137.	Any other application for which no period of limitation is provided elsewhere in this Division.	3 yrs	When the right to apply accrues.
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The Bankers Book Evidence Act, 1891

(Act No. 18 of 1891)

[1st October 1891]

An Act to amend the Law of Evidence with respect to Bankers' Books; Whereas it is expedient to amend the Law of Evidence with respect to Banker's Books; It is hereby enacted as follows:

1. This Act has been extended to Pondicherry by Act 26 of 1968 sec. 3 and Sch.

2. Definitions.

In this Act, unless there is something repugnant in the subject or context, - 1[(1) Company means any company means any company as defined in Sec. 3 of the Companies Act, 1956 and includes a foreign company within these meaning, of Sec. 591 of that Act; (1-A) "Corporation" means any body corporate established by any law for the time being in force in India and includes the Reserve Bank of India and any subsidiary banks as defined in the State Bank of India and any subsidiary bank as defined in the State Bank of India (Subsidiary 'Banks) Act, 1959 (38 of 1959;)] (2) "Bank" and "banker" mean-

2[(a) Any company or corporation carrying on the business of banking;] (b) Any partnership or individual to whose books the provisions of the Act shall have been extended as hereinafter provided;

[(c) Any post office savings bank, office savings bank or money order office;]

4[(3) "bankers' books" include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both;] 5(4) "Legal proceedings" means, -

(i) Any proceeding or inquiry in which evidence is or any be given; (ii) An arbitration; and (iii) Any investigation or inquiry under the Code of Criminal Procedure. 1973 (2 of 1974), or under any other law for the time being in force for the collection of evidence, conducted by a police officer or by other person (not being a Magistrate) authorised in this behalf by Magistrate or by a magistrate or by any law for the time being in force:)

(5) "The Court" means the person or persons before whom a legal proceeding is held or taken;

(6) "Judge" means a Judge of a High Court, (7) "Trial" means the person or persons before whom-n a legal proceeding is held or taken; and 6[(8) "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 electromagnetic 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.]

7[(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.]

1. Subs. by Act No. 56 of 1962 sec. 4 for clause (1) (w.e.f. 14-12-1962). 2. Subs. by Act No. 56 of 1962 sec. 4 for sub-clause (a) (w.e.f. 14-12-1962). 3. Added by Act 1 of 1893 sec. 2. 4. Clause (3) subs. by Act 21 of 2000 sec. 93 and Sch. III and again subs. by Act 55 of 2002 Sec. 11 for bankers book include ledgers day-books cash-book, account-books and all other books used in ordinary bussiness of a bank whether kept in the written form or as printouts of data stored in a floppy disc tape or any other form of electromagnetic data storage device (w.e.f. 6-2-2003) 5. Subs. by Act 1 of 1984, sec. 2 (w.e.f., 15-12-1984). 6. Subs. by Act, 21 of 2000 sec. 93 and Sch. III for clause (8) (w.e.f. 17-10-2000 . 7. Ins. by Act 55 of 2002 sec. 11 (w.e.f. 6-2-2003).

2A. Conditions in the printout 1[2A. Conditions in the printout.

A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely: -

(a) A certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and (b) A certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of-

(A) The safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons; (B) The safeguards adopted to prevent and detect unauthorized change of data; (C) The safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) The manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electromagnetic data storage devices; (E) The mode of verification in order to ensure that data has been Accurately transferred to such removable media; (F) The anode of identification of such data storage devices; (G) The arrangements for the storage and custody of such storage devices; (H) The safeguards to prevent and detect any tampering with the system; and (I) Any other factor, which will vouch for the integrity and accuracy of the system.

(c) A further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.]

1. Ins. by Act 21 of 2000 sec. 93 and Sch. III (w.e.f. 17-10-2000).

3. Power to extend provisions of Act.

The State Government may, from time to time, by notification in the official Gazette extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and ledger, and may in like manner rescind any such notification.

4. Mode of proof of entries in bankers' books

Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. Case in which officer of bank not compellable to produce books-

No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker book the contents of which can be proved under this act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

6. Inspection of books by order of Court or judge.

(1) On the application of any party in 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 book for any of the purposes of such proceeding, or may order the bank to produce any banker 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 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 or without summoning the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

7. Costs.

(1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall not be in the discretion of the Court or Judges, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank. (2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding. (3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself: Provided that nothing in this subsection shall be construed to derogate from any power which the Court or Judge making the

order may possess for the enforcement of its or his directions with respect to the payment of costs.

8. Order of court to be construed to be order made by specified officer 1[8. Order of court to be construed to be order made by specified officer-

In the application of Sees. 5, 6 and 7 to any investigation or inquiry referred to in sub-clause (iii) of clause (4) of Sec. 2, the orders of a court or a Judge referred to in the said sections shall be construed as referring to an order made by an officer of a rank not lower than the rank of a Superintendent of Police as may be specified in this behalf by the appropriate Government. Explanation. In this section, "appropriate Government" means the Government by which the police officer or any other person conducting the investigation or inquiry is employed.]

1. Inserted by Act 1 of 1984, sec. 2 (w.e.f. 15-2-1984)

Debt Recovery

Introduction

Due to the immense overload, which is prevalent in the Indian legal system at the present time, the recovery of many unpaid debts, due to banks or financial institutions, was being held up indefinitely, resulting in the loss of a substantial amount of revenue and finance. Usually, when banks or financial institutions are approached for financial assistance, the amounts dealt with are very large. It was thought that an independent forum was needed to deal with debts of these types. Thus, in 1993 the 'Recovery of debts, due to Banks and Financial Institutions Act' was passed. The statement of objects and reasons states that this

act, and the corresponding redressal structure established under it, was to provide speedy and efficient redressal for the recovery of debts, due to banks and financial institutions. However, the Act imposes a limitation and states that only those debts, which are in excess of Rs. Ten Lakhs (or up to Rs. 1 Lakh where the Central Government specifies certain types of debts), would come under its purview. This limitation is totally in keeping with the intentions of the makers of the Act.

What is this Act all about?

The salient features of this Act are as follows:

- It makes provisions for the expeditious recovery of debts, due to Banks and Financial Institutions;
- It has no application to State Level Financial institutions;
- It has overriding effect but does not repeal any existing law. Moreover, the provisions of the act are not in derogation of, but in addition to the following;
 - The Industrial Finance Corporation Act, 1948
 - The State Financial Corporations Act, 1951
 - The Unit Trust of India Act,1963; Industrial Reconstruction Bank of India Act,1984; and
 - The Sick Industrial Companies (Special Provisions) Act, 1985.
- It constitutes Debt Recovery Tribunals for recovery of debts, due to Banks and Financial Institutions;
- It also sets up Debt Recovery Appellate Tribunals;
- It makes provision for making an application to Debt Recovery Tribunals for recovery of debts that are made recoverable under the Act;
- It makes provision for appeals to the Debt Recovery Appellate Tribunals from orders passed by Debt Recovery Tribunals;
- It mandates for a deposit of at least seventy five per cent of the amount of due debt with the Appellate Tribunal by the defendant-appellant;
- It includes the arrest of the debtor and his detention in civil prison inter alia as modes of recovery
- It provides for the transfer of pending suits, instituted for the recovery of debt, to the respective Debt Recovery Tribunals;
- It bars jurisdiction of courts or other authorities, except that of the High Court and the Supreme Court, from exercising powers vested in them under the Constitution, in relation to the matters, specified in Section 17 of the Act.

What are the provisions relating to the establishment of tribunals under the act?

The Act provides for the establishment of tribunals by the Central Government. The Central Government will also specify the areas within which such tribunals will have jurisdiction.

Composition:A tribunal shall consist of one person only (the Presiding Officer) to be appointed by notification by the Central Government. The Central Government may also specify that a presiding officer of one tribunal may also takeover the functions of the presiding officer of another tribunal.

Qualifications of a Presiding Officer:A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless, he is, or has been, or is qualified to be a District Judge.

Term of Office:The Presiding Officer of a Tribunal shall hold office for a term of five years from the date on which he enters his office or, until he attains the age of sixty-two years, whichever is earlier.

Staff of Tribunal:The Central Government shall provide the Tribunal with a Recovery Officer and such other officers and employees as it may deem fit. The Recovery Officer and all other officers and employees shall be under the general supervision of the Presiding Officer.

What are the provisions of the Act relating to the establishment of Appellate Tribunals?

The Central Government shall by notification establish one or more Appellate Tribunals. By such notification, the Central Government shall also specify the Tribunals in relation to which the Appellate Tribunal shall exercise jurisdiction.

Composition:An Appellate Tribunal shall consist of one person only (the Presiding Officer of the Appellate Tribunal). He will be appointed by the Central Government.

Qualifications for the appointment of the Presiding Officer of the Appellate Tribunal:

1. He should be, or have been qualified to be a Judge of a High Court; or
2. He should have been a member of the Indian Legal Service and have held a post in Grade I of that service for at least three years; or
3. He should have held office as the Presiding Officer of a Tribunal for at least three years.

Term of Office: The Presiding Officer of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Staff of the Appellate Tribunal: The staff of the Appellate Tribunal would comprise of a Presiding Officer and such other officers and employees, as the Government would deem fit and necessary.

All such staff shall be under the general supervision of the Presiding Officer of such Appellate Tribunal.

What are the provisions relating to the resignation or removal of the Presiding Officer of a tribunal or an Appellate Tribunal?

- The Presiding Officer of a Tribunal or an Appellate Tribunal may, by notice in writing under his hand, addressed to the Central Government, resign his office, Provided that the Presiding Officer shall continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.
- The Presiding Officer shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after inquiry:
 - in the case of the Presiding Officer of a Tribunal, made by a judge of a High Court.
 - in the case of a Presiding Officer of an Appellate tribunal, made by a Judge of the Supreme Court,
 - in which the concerned Presiding Officer has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

What is the procedure to be followed where a bank or a financial institution wants to make an application under the Act?

- Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of the jurisdictions of the following:
 - the defendant, or each of the defendants where there are more than one, at the time of making the application, actually or voluntarily resides or carries on business, or personally works for gain;
 - any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain;
 - the place where the cause of action, wholly or in part, arises.

- Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee for filing the applications, as may be prescribed as follows:
 - Provided that the fee may be prescribed in relation to the amount of debt to be recovered:
 - Provided further that nothing contained in this sub-section, relating to fees, shall apply to cases that have been transferred to the Tribunal under sub-section (1) of section 31.
- On receipt of the application under sub-section (1), the tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief that is prayed for, should not be granted.
- The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such orders on the application, as it thinks fit, to meet the ends of justice.
- The Tribunal shall send a copy of every order, passed by it, to the applicant and the defendant.
- The Tribunal may make an interim order (whether by way of injunction or stay) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of any property and assets to him, without the prior permission of the Tribunal.
- The Presiding Officer shall issue a certificate under his signatures on the basis of the order of the Tribunal, to the Recovery Officer for recovery of the amount of debt, specified in the certificate.
- The application made to the Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, finally, within six months from the date of the receipt of application.

What is the procedure for filing an appeal?

1. Any person, who is aggrieved by an order, made or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having Jurisdiction in the matter.
2. Provided that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.
3. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made by the Tribunal is received by him. It shall be in such form and be accompanied by such fee as may be prescribed:

4. Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.
5. On the receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
6. The Appellate Tribunal shall send a copy of every order, made by it, to the parties to the appeal and the concerned Tribunal.
7. The appeal, filed before the Appellate Tribunal, shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Does the filing of an appeal require the deposit of any amount with the Appellate Tribunal?

Yes. Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five percent of the amount of debt, so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

What are the procedures and powers of the Tribunal and Appellate Tribunal?

- The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908. It shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules; the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure, including the places at which they shall have their sittings.
- The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, while trying a suit, in respect of the following matters:
 - summoning and enforcing the attendance of any person and examining him on oath;
 - requiring the discovery and production of documents;
 - receiving evidence on affidavits;
 - issuing commissions for the examination of witnesses or documents;
 - reviewing its decisions;
 - dismissing an application for default or deciding it ex parte;

- setting aside any order of dismissal of any application for default or any order of dismissal of any application for default or any order passed by it ex-parte;
- any other matter which may be prescribed.
- Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. The Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

What are the provisions, relating to legal representation of the parties?

- A bank or a financial institution, making an application to a Tribunal or an appeal to an Appellate Tribunal, may authorize one or more legal practitioners or any of its officers to act as Presenting Officers. Every person, so authorized by it may present its case before the Tribunal or the Appellate Tribunal.
- The defendant may either appear in person or authorize one or more legal practitioners or any of his or its officers to present his or its case before the tribunal or the Appellate Tribunal.

The expression Legal Practitioner means an Advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent.

What are the modes open to the Recovery Officer to recover the amount of debt specified in the certificate of the Presiding Officer?

This can be done by one or more of the following modes:

A Decree that is passed can be executed simultaneously against the person and the property of the debtor. After the Tribunal has passed its order, under sub-section (4) of Section 19, finally disposing of the Application of a Bank or Financial institution, made under sub-section (1) of that Section, the Tribunal, is required to do the following:

- send a copy of every order, passed by it, to the applicant and the defendant, under sub-section (5) of Section 9;
- prepare a certificate of recovery; on the basis of the order referred to in sub-section (5) of that Section;
- send the same, under sub-section (7) of that Section, to the Recovery Officer for recovery of the amount of debt, specified in that certificate.

The Recovery Officer shall on receipt of the copy of the certificate from the Presiding Officer proceed to recover the amount of debt, specified in the certificate, by one or more of the following modes, namely:

- the attachment and sale of the movable or immovable property of the defendant;
- the arrest of the defendant and his detention in prison;
- the appointment of a receiver for the management of the movable or immovable properties of the defendant.

The above words, 'by one or more of the following modes' signify that the said three modes of recovery may be concurrent and not exclusive of the others.

If the property is subject to speedy and natural decay, does a Recovery Officer have the power to sell it off at once?

When the property, seized by the Recovery Officer, is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once. This provision is not different from the provision of the second schedule to the Income Tax Act, 1961 and it is made applicable to the recovery proceedings under the Act.

Can property be attached by merely affixing the warrant of attachment to the outer door of a warehouse, for example?

A warrant of attachment, executed by affixing the same to the outer door of a warehouse where the goods of the defendant-debtor are stored, shall amount to actual seizure.

If there is more than one application for the execution of decrees against the same judgment-debtor, how will the property that is in the custody of the court be distributed?

Where the assets are held by a court and more than one person have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money against the same judgment-debtor and they have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be ratably distributed among all such persons

Is it mandatory upon the Recovery Officer to give notice before actually attaching the property?

Where any immovable property is attached, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears was served upon the defendant debtor. A notice to pay is, therefore, a condition that is precedent to attachment.

After the attachment of the property, Mr. X sold one of his Mercedes cars. Would the sale of the car convey good title to the transferee?

Where an attachment is made, any private transfer or delivery of the attached property or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies, contrary to such attachment, shall be void as against all claims that are enforceable under the attachment. As against the attaching creditor, a private sale would not be effective. However, in case the attachment is withdrawn or the claim of any creditor otherwise satisfied, the sale deed as executed would convey good title to the transferee.

Can a Recovery Officer appoint a Receiver for the property attached by him?

Where the property of a defendant consists of a business, the Recovery Officer may attach the business and appoint a person as Receiver to manage the business. The appointment of the Receiver is though in the discretion of the Recovery Officer, the power to appoint a Receiver is not to be exercised as a matter of course or for reason merely that it can cause no harm to appoint one. Thus, unless there is some substantial ground for interference, a Receiver should not be appointed in supersession of a bonafide possessor of the property.

Can property, which is not in the possession of the judgment debtor, be attached? (E.g. mortgage debts).

When the property is not in possession of the defendant-debtor, e.g. debts and shares, it can be attached in accordance with Rule 46 of Order XXI of the Civil Procedure to be construed mutates mutandis. A mortgage debt can also be attached under this Rule and, if attached and sold, the purchaser succeeds to all the rights of the mortgagee. He can enforce his rights against the mortgagor personally and he also has the right to sell the mortgaged property.

The Consumer Protection Act, 1986

(68 of 1986)

24th December; 1986

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

PRELIMINARY
CONSUMER PROTECTION COUNCILS
CONSUMER DISPUTES REDRESSAL AGENCIES
MISCELLANEOUS

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called the Consumer Protection Act, 1986.
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
 - (4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.
2. Definitions. - (1) In this Act, unless the context otherwise requires,—
 - (a) "appropriate laboratory" means a laboratory or organisation—
 - (i) recognised by the Central Government;
 - (ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
 - (iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;
 - (aa) "branch office" means—
 - (i) any establishment described as a branch by the opposite party; or
 - (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;
 - (b) "complainant" means—

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
- (iii) the Central Government or any State Government,
- (iv) one or more consumers, where there are numerous consumers having the same interest;
- (v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

(c) "complaint" means any allegation in writing made by a complainant that—

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price –

(a) fixed by or under any law for the time being in force

(b) displayed on the goods or any package containing such goods ;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used or being offered for sale to the public,--

(A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;”;

(d) "consumer" means any person who—

- (i) 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

- (ii) 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 purposes;

Explanation.— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

- (e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.
- (f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;
- (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;
- (h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9;
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);
- (j) “manufacturer” means a person who—
- (i) makes or manufactures any goods or part thereof; or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

Explanation. — Where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall

not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office;

- (jj) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;
- (k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;
- (l) "notification" means a notification published in the Official Gazette;
- (m) "person" includes,—
 - (i) a firm whether registered or not;
 - (ii) a Hindu undivided family;
 - (iii) a co-operative society;
 - (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;
- (n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;
- (nn) "regulation" means the regulations made by the National Commission under this Act;
- (nnn) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—
 - (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
 - (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;
- (o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
- (oo) "spurious goods and services" mean such goods and services which are claimed to be genuine but they are actually not so;
- (p) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;

- (q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;
- (r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

- (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (ii) falsely represents that the services are of a particular standard, quality or grade;
- (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
- (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be—

- (i) a warranty or guarantee of a product or of any goods or services; or
- (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are,

ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

- (x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause (1), a statement that is—

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation .—For the purpose of clause (2), "bargaining price" means—

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation. — For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

3. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

CHAPTER II

CONSUMER PROTECTION COUNCILS

4. The Central Consumer Protection Council.—(1) The Central Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

(a) the Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman, and

(b) such number of other official or non-official members representing such interests as may be prescribed.

5. Procedure for meetings of the Central Council.—(1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

6. Objects of the Central Council.—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—

- (a) the right to be protected against the 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, as the case may be so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumer's 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
- (f) the right to consumer education.

7. The State Consumer Protection Councils.- (1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for..... (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely:—

- (a) the Minister incharge of consumer affairs in the State Government who shall be its Chairman;
- (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.
- (c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8. Objects of the State Council. — The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.
- 8A. (1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.
- (2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—
- (a) the Collector of the district (by whatever name called), who shall be its Chairman; and
- (b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.
- (3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.
- 8B. The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. Establishment of Consumer Disputes Redressal Agencies. - There shall be established for the purposes of this Act, the following agencies, namely:—
- (a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification: Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.
- (b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and
- (c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.
10. Composition of the District Forum. — (1) Each District Forum shall consist of,—
- (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
- (b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—

- (i) be not less than thirty-five years of age,
- (ii) possess a bachelor's degree from a recognised university,
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government;

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

- (i) the President of the State Commission — Chairman.
- (ii) Secretary, Law Department of the State — Member.
- (iii) Secretary incharge of the Department dealing with consumer affairs in the State — Member.

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to

the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

- (3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

11. Jurisdiction of the District Forum.—(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed "does not exceed rupees twenty lakhs.

- (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

12. Manner in which complaint shall be made.—(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation. - For the purpose of this section "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force".

13. Procedure on admission of complaint. — (1) The District Forum shall, on admission of a complaint, if it relates to any goods,—

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of

the reference or within such extended period as may be granted by the District Forum;

- (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
- (e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;
- (f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;
- (g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (/) and issue an appropriate order under section 14.

(2) the District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
- (b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—
 - (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or
 - (ii) ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

- (c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.
- (3) No proceedings complying with the procedure laid down in subsections [1] and [2] shall be called in question in any court on the ground that the principles of natural justice have not been complied with.
- (3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:
- Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:
- Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.
- Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.
- (3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.
- (4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
 - (ii) the discovery and production of any document or other material object producible as evidence;
 - (iii) the reception of evidence on affidavits;
 - (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
 - (v) issuing of any commission for the examination of any witness, and
 - (vi) any other matter which may be prescribed.
- (5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

- (6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.
- (7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

14. Finding of the District Forum. — (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently;

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

15. Appeal. — Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less:

16. Composition of the State Commission. — (1) Each State Commission shall consist of—

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

- (i) be not less than thirty-five years of age;
- (ii) possess a bachelor's degree from a recognised university; and
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst persons having a judicial background.

Explanation. — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government.

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:—

- | | | |
|---|----|-----------|
| (i) President of the State Commission | -- | Chairman; |
| (ii) Secretary of the Law Department of the State | -- | Member; |
| (iii) Secretary incharge of the Department dealing with Consumer Affairs in the State | -- | Member: |

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(1B)(i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the Consumer

Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

17. Jurisdiction of the State Commission. — (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

17A. Transfer of cases. - On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

17B. Circuit Benches.-The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.

18. Procedure applicable to State Commissions.—The provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

(18A. Omitted)

19. Appeals.—Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

19A. Hearing of Appeal - An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or, the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

20. Composition of the National Commission.—(1) The National Commission shall consist of—

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised university; and

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to

economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst the persons having a judicial background.

Explanation. — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the Central Government :

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—

- (a) a person who is a Judge of the Supreme Court, — Chairman;
to be nominated by the Chief Justice of India
- (b) the Secretary in the Department of Legal Affairs — Member;
in the Government of India
- (c) Secretary of the Department dealing with
consumer — Member.;
affairs in the Government of India

(1A)(i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) if the Members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other Members and such point or points shall

be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.

(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) :

Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.

21. Jurisdiction of the National Commission. — Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

22. Power of and procedure applicable to the National Commission. — (1) The provisions of sections 12, 13 and 14 and the rules madethereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

- 22A. Power to set aside ex parte orders. - Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.
- 22B. Transfer of cases - On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission.
- 22C. Circuit Benches - The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.
- 22D. Vacancy in the Office of the President - When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the case may be:

Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person among such members, shall preside over the National Commission in the absence of President of that Commission.

23. Appeal. — Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause(a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

24. Finality of orders. — Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

24A. Limitation period. - (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

24B. Administrative Control.—(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:—

- (i) calling for periodical return regarding the institution, disposal pendency of cases;
- (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
- (iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).

25. Enforcement of orders of the District Forum, the State Commission or the National Commission. — (1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by

whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

26. Dismissal of frivolous or vexatious complaints. — Where a complaint instituted before the District Forum, the State Commission or as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order
27. Penalties. — (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).
- (3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.
- 27A. Appeal against order passed under section 27 - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from -
- (a) the order made by the District Forum to the State Commission ;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.
- (2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.
- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission :
- Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

CHAPTER IV

MISCELLANEOUS

28. Protection of action taken in good faith. — No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

28A. Service of notice, etc. - (1) All notices required by this Act to be served shall be served in the manner hereinafter mentioned in sub-section (2).

(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (including FAX message).

(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant :

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

(4) All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.

29. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the (Central Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act

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

(3) If any difficulty arises in giving effect to the provisions of the Consumer Protection (Amendment) Act, 2002, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Consumer Protection (Amendment) Act, 2002.

(4) Every order made under sub-section (3) shall be laid before each House of Parliament.

29A. Vacancies or defects in appointment not to invalidate orders.—No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its member or any defect in the constitution thereof.

30. Power to make rules. - (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13 clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.

30A. Power of the National Commission to make regulations - (1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for the cost of adjournment of any

proceeding before the District Forum, the State Commission or the National Commission, as the case may be, which a party may be ordered to pay.

31. Rules and regulations to be laid before each House of Parliament - (1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

Bank Ombudsman

Banking Ombudsman is a quasi-judicial authority functioning under India's Banking Ombudsman Scheme 2006, and the authority was created pursuant to the a decision by the Government of India to enable resolution of complaints of customers of banks relating to certain services rendered by the banks. The Banking Ombudsman Scheme was first introduced in India in 1995, and was revised in 2002. The current scheme became operative from 1 January 2006, and replaced and superseded the banking Ombudsman Scheme 2002. From 2002 until 2006, around 36,000 complaints have been dealt by the Banking Ombudsmen.

Type of complaints

- The type and scope of the complaints which may be considered by a Banking Ombudsman is very comprehensive, and it has been empowered to receive and consider complaints pertaining to the following:
- Non-payment or inordinate delay in the payment or collection of cheques, drafts, bills, etc.;
- Non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission for this service;
- Non-acceptance, without sufficient cause, of coins tendered and for charging of commission for this service;

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- Non-payment or delay in payment of inward remittances ;
- Failure to issue or delay in issue, of drafts, pay orders or bankers' cheques;
- Non-adherence to prescribed working hours;
- Failure to honour guarantee or letter of credit commitments;
- Failure to provide or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
- Delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank ;
- Delays in receipt of export proceeds, handling of export bills, collection of bills etc., for exporters provided the said complaints pertain to the bank's operations in India;
- Refusal to open deposit accounts without any valid reason for refusal;
- Levying of charges without adequate prior notice to the customer;
- Non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/debit card operations or credit card operations;
- Non-disbursement or delay in disbursement of pension to the extent the grievance can be attributed to the action on the part of the bank concerned, (but not with regard to its employees);
- Refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government;
- Refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
- Forced closure of deposit accounts without due notice or without sufficient reason;
- Closure of account without customer concern.
- Refusal to close or delay in closing the accounts;
- Non-adherence to the fair practices code as adopted by the bank; and
- Financial loss incurred to customer due to wrong information given by bank official.

- Any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.
- complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank-related matters;

Vide their Circular No.CSD.BOS.4638/13.01.01/2006-07 dated May 24, 2007, the Reserve Bank of India has amended their Banking Ombudsman Scheme, 2006 and the scheme shall be operative with amended effect.

Lok Adalat

Lok Adalat is a system of alternative dispute resolution developed in India. It roughly means "People's court". India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats is an improvement and is based on the principles of Mahatma Gandhi. Lok Adalat is a non-adversarial system, whereby mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee. They are held periodically for exercising such jurisdiction as they determine. These are usually presided over by retired judges, social activists, or other members of the legal profession. The Lok Adalats can deal with all Civil Cases, Matrimonial Disputes, Land Disputes, Partition/Property Disputes, Labour Disputes etc., and compoundable criminal Cases.

Focus

The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgement by consent. All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court. It is also important that decision should be justifiable.

Lender liability Act

Lender liability is often discussed generically because many theories of lender liability apply irrespective of the type of loan (residential or commercial, permanent or construction). The construction loan, however, presents greater risks to the borrower and the lender, and greater opportunities for disputes both between them and with third parties, leading to an increased potential for lender liability litigation.

Discussion of lender liability brings to mind recent litigation in which large verdicts were obtained against lenders. The theories of lender liability all present a framework within which both permanent and construction lenders must conduct their affairs.

A common theory in lender liability actions is breach of contract, and the first contract that is considered in the borrower-lender relationship is the loan commitment. This is the most

litigated loan contract, whether the initial contract to make the loan or a commitment to extend or recast the loan as a result of borrower difficulties.

Although the lender has the right to refuse to make a loan, the lender must comply with the laws governing the loan application process. For example, the lender cannot discriminate against the borrower on the basis of race, religion, national origin, sex, marital status, or age.² The lender also has a duty to process a loan application with reasonable care.³ The negligent calculation of the applicant's qualifications under standard industry criteria may give rise to a cause of action against the lender for failure to use due care.

Processing the application is one thing; protecting the borrower from an improvident deal is quite another. In the commercial loan setting, the lender is generally not required to protect the inexperienced borrower from a bad business decision.

A greater duty must be established for the lender to be held liable.

Once the borrower and the lender agree on the terms of a loan, a contract, usually a conditional contract, is formed. If a party breaches that contract, the usual contract remedies apply. Lender liability is found when the lender breaches its promise to extend financing similarly, the lender is liable for breach of its promise to forbear from the exercise of remedies otherwise available to it under the loan documents⁸ or failing to honor previously agreed-upon loan modification terms.

For example, in one case a lump sum payment was due under a note. The borrower had financial difficulties and agreed with the loan officer to convert the obligation to an installment loan.

When the loan officer went out of town, the loan officer's superior refused to convert the note, accelerated its due date, and exercised the lender-bank's offset rights against the other accounts of the borrower. The court held the lender liable for the borrower's damages.

This does not mean that the lender as a matter of course is obligated to extend the loan opening date. Rather, the lender is entitled to demand strict compliance with the terms of the commitment and, upon the borrower's breach, retain the commitment fee. The lender will not be liable for breach of the covenant of good faith and fair dealing when the loan commitment clearly states that the borrower was not entitled to a refund under any circumstances and there was no contractual obligation on the lender to grant an extension of time to perform. Further, the borrower must comply with the requirements of the loan commitment, notwithstanding alleged oral statements by an officer of the lender amending commitment requirements.

Although the lender may be liable for damages incurred by the borrower as a result of the lender's breach of the loan commitment, punitive damages are generally not recoverable.

Damages for breach of contract are limited to those necessary to compensate the borrower for the lender's breach, that is, the excess interest required to be paid on replacement

financing. The old rule that the borrower could not specifically enforce the loan commitment is falling into disfavor, and borrowers are being granted the right to do so.¹³ The opposite is not true, however; the courts generally do not allow the lender to enforce a long-term commitment against the borrower.

Lenders have not successfully defended against these claims on the basis that the loan agreement was not in writing. The courts have recognized causes of action for breach of oral loan commitments.¹⁵ Similarly, the borrower is not barred by the parol evidence rule from proving a verbal commitment by the lender to make the loan and may recover lost profits upon the presentation of proper evidence.¹⁶ The lender will be liable if the borrower can demonstrate that an enforceable oral agreement was made.¹⁷ It is important that the borrower establish a meeting of the minds. The mere expression of intent may not be adequate to establish that a contract was formed.¹⁸ Words of encouragement do not constitute a binding commitment if the essential elements of a binding contract, such as the amount of the loan, the interest rate, repayment terms, and loan fees and charges, are not agreed upon. The borrower must present evidence that, in fact, an agreement was made, and the terms of the agreement must be definite.

The statute of frauds defense may be available if the oral agreement is not capable of performance within one year. In several states, statutes have been enacted to bring some certainty to this area of the law. In 1986, Minnesota became the first state to require that all loan commitments be in writing in order to be enforceable. The Minnesota statute was essentially an expansion of the statute of frauds and has been upheld.

Borrowers may also breach their loan commitment obligations and be liable for improper conduct. Because the borrower has a duty to deal fairly and in good faith, a borrower who refuses to acknowledge or respond to the lender's request for comments on closing documents or to negotiate in good faith to close the loan breaches that duty. If the borrower fails to close the loan, the entire commitment fee may be forfeited. If the borrower fails to comply with the conditions contained in the loan commitment, the lender may refuse to fund the loan and may retain the commitment fee.

Fraud

Generally, a cause of action for fraud requires false representation, concealment of a material fact, or the creation of a false impression in the mind of the borrower; reasonable reliance by the borrower; and damages. Lender liability founded upon this theory may run to both the borrower and to third parties. When the lender conspires with the borrower to defraud home buyers, it may be liable to them. Evidence of conspiracy may be found in the lender's participation in decisions to make cosmetic repairs to conceal defects that would otherwise be discovered by prospective buyers; decisions not to pursue those primarily responsible for the defects, such as contractors and architects; and decisions not to disclose information relating to the defects, even after inquiry.

Fraud liability to the borrower may arise in many contexts. For example, liability may follow when the lender threatens the borrower without the ability or intention to follow through with those threats. Constructive fraud may arise although there is no actual fraudulent intent when there is a breach of duty and a relationship of confidence and trust between the borrower and the lender.

Negligence

In some cases lenders have been found to be liable to their borrowers and others on a negligence theory. Any cause of action for negligence must arise out of a positive duty that the law imposes on certain people because of the nature of their relationship and must include some negligent act. A good example of such liability may be found when the purchaser relies to its detriment on an appraisal supplied by the lender. The lender owes a duty of care in preparing the appraisal if the lender can foresee that the borrower will rely upon the erroneous appraisal. If the lender becomes directly involved in the transaction or makes assurances of the value of the property, it may be held liable to third parties that it should have foreseen would rely upon its statements.

Lenders will not be automatically liable when an appraisal obtained from an independent appraiser is erroneous unless the lender contractually agrees to assume such duty or makes representations to the borrower or to third parties about the accuracy of the appraisal.

Good Faith

Perhaps the most talked-about theory of lender liability is the concept of good faith. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement.⁴³ The covenant of good faith and fair dealing requires that neither party do anything to deprive the other of the benefits of the agreement.⁴⁴ In the event of breach, general tort remedies may be available to the borrower.⁴⁵ The obligation of good faith present in every contractual relation is not an invitation to the court to decide whether one party ought to have exercised the rights provided to it by agreement. Rather, it is an implied undertaking not to take opportunistic advantage in a way that could not have been contemplated at the time the agreement was made. When the contract is silent, the principles of good faith fill the gap.⁴⁶ To should be noted that some courts have held that the implied duty of good faith and fair dealing does not apply to commercial loan transactions negotiated at arm's length.⁴⁷ Obviously, there are many contrary cases holding that every contract implies a duty of good faith and fair dealing between the parties.

There are two standards of good faith, subjective and objective. Under the subjective standard, the lender must have a good-faith belief that its action is justified. The burden of establishing a lack of good faith is on the party against whom the lender's power was exercised.⁴⁹ This is not a "commercially reasonable" or "reasonable lender standard," but

rather a subjective standard of whether the lender had information that would have allowed it to honestly believe that its position had become insecure.⁵⁰

The objective standard is one of honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

Fiduciary Duty

The breach of a fiduciary duty is another theory of lender liability that has attracted a lot of attention recently. If a fiduciary duty is found to exist, the lender must put the borrower's interest ahead of its own. This requirement makes it easier for the borrower to establish lender liability.

A fiduciary relationship is one in which one party places trust and confidence in another who thereby gains domination and superiority over the first party.⁶⁶ A claim of fiduciary duty may be based on the existence of a special relationship between a lender and a borrower that justifies abandonment of the normal debtor-creditor relationship and imposes liability on the lender to act in a reasonable manner so as not to cause injury to the borrower. This relationship of trust and confidence is more easily found in the residential or personal loan context because the normal trust between businesses, plus a slightly dominant position, does not create a fiduciary relationship. A creditor does not have any fiduciary duty to the borrower or other creditors solely as the result of the borrower-lender relationship. Merely asking the lender for advice does not create a confidential relationship in the absence of domination or influence by the lender over the borrower. And a lender's involvement in a loan workout does not create a fiduciary, joint venture, or "quasi joint venture" relationship between a lender and a borrower if the key element establishing a fiduciary relationship or duty (control by the lender over the affairs or property of the borrower) is lacking.

Factors to consider in determining a fiduciary relationship include:

1. unequal bargaining power
2. adhesive contract provisions
3. public policy concerns that conduct themselves in a particular manner
4. whether the financial dependence or personal security of the damaged party was entrusted to the other
5. the reasonable expectations of the parties

Modern banking practices, with their highly complex structures, may thrust the lender into the role of an advisor, thereby creating a relationship of trust and confidence and a resulting fiduciary duty. To establish liability, there must be control by the lender over the decision-making processes of the debtor amounting to a domination of the debtor's will.

Lender's Checklist

The following is a checklist of steps that prudent lenders should take in connection with mortgage loans:

___ Prior to making the loan, as part of its underwriting analysis, the lender should review the borrower's assets, business operations, and the use of the mortgaged property by the borrower, tenants, and other occupants to ascertain that there are no adverse environmental conditions or concerns.

___ The loan documents should give the lender the right to monitor activities conducted on the mortgaged property by the borrower and the borrower's tenants and should provide that the lender receive copies of notices to the borrower or occupants of the mortgaged property from federal, state, or local environmental agencies.

___ The loan documents should state that the lender's right to inspect the mortgaged property and monitor the operations and activities conducted on the mortgaged property are for the sole and express purpose of protecting the lender's security interest and are for the lender's sole benefit.

___ The lender should not involve itself in the day-to-day operations of the borrower or directly control the use and operation of the mortgaged property, nor should the lender have the right to manage the borrower's affairs or control its financial or employment decisions.

___ The lender should develop consistent policies and procedures, including recordkeeping, regarding environmental matters, especially in connection with workouts.

___ Prior to making the mortgage loan and prior to foreclosure or agreeing to accept a deed in lieu of foreclosure, the lender should obtain a Phase I environmental report from a reputable independent environmental consulting firm to determine existing and potential hazardous waste liability. As part of the report, the chain of title should be searched, along with the records of the

EPA and state and local environmental agencies, to determine whether the site, or property in the generation, storage, or treatment of hazardous materials. The lender should also consider obtaining an additional, updated Phase I environmental report at the time of any subsequent loan modification or workout, because the value of the mortgaged property at each such occurrence and the lender's exposure to environmental liability may depend on the environmental condition of the mortgaged property.

___ As part of the loan application, the lender should consider requiring the borrower to complete an environmental questionnaire and to execute an environmental risk agreement.

___ The lender should consider maintaining the confidentiality of all environmental reports, evaluations, questionnaires, agreements, and other documents requested by the lender in connection with real estate transactions. There is no guarantee that a court will

uphold these confidences in connection with a specific case. The lender's counsel should, however, attempt to protect the confidentiality of such documents under the attorney-client privilege or the attorney work product privilege.

___ If the environmental report or other information indicates environmental risks, the lender should retain an experienced environmental consultant to conduct more comprehensive testing to ascertain the existence and extent of environmental contamination. If environmental contamination exists, the lender must decide whether to make the loan at all, or possibly to exclude contaminated portions of the collateral from the mortgage security and reduce the amount of the loan accordingly.

___ The description of the secured collateral in the loan documents should specifically exclude all hazardous materials and substances, asbestos, and underground storage tanks.

___ The lender's loan documents should make the borrower and its principals personally liable for all costs in connection with environmental hazards. Any nonrecourse provisions in the loan documents should except liability for costs of compliance with environmental laws, and the lender should be indemnified for such costs by the principals of the borrowing entity. These indemnity provisions should survive the maturity and payment of the loan. Releases and indemnities executed by the borrower in favor of the lender cannot prevent the lender from being directly liable to the government and other third parties, although such agreements are enforceable as between the parties.

___ It may be desirable to obtain personal guarantees of the loan from unrelated and unaffiliated guarantors with extensive financial resources, because CERCLA may impose liability on corporate officers and shareholders of the borrower. This would seriously dilute the value of guarantees from such parties. Recent cases indicate that environmental liability may be imposed on anyone with the ability and power to discover, prevent, control, and correct hazardous waste contamination, and therefore the environmental review by the lender should encompass the activities of all such parties.

___ If the borrower defaults and a site inspection or an environmental audit reveals even the possibility of contamination at the site, the lender should consider the immediate appointment of a state court receiver, or even filing an involuntary bankruptcy proceeding against the borrower.

This may insulate the lender from environmental liability and enable the mortgaged property to be cleaned up under the foreclosure or bankruptcy court's direction and/or sold without involvement by the lender.

UNIT 5

Commercial Laws with reference to banking operations: Indian Contract Act, 1872, The Sale of Goods Act, 1930, Indian Partnership Act, 1932, Foreign Exchange Management Act 2000, Right to Information Act, Information Technology Act

Indian Contract Act, 1872

Commencement and applicability:-

Prior to this English law of contract was followed in India.

- It has XI chapter.
- Law of contract creates jus in personem and not in jus in rem.

The Indian Contract Act consists of the following two parts:

(a) General principals of the Law of Contract.

(b) Special kinds of contracts.

- The general principals of the Law of Contract are contained in Sections 1 to 75 of the

Indian Contract Act. These principles apply to all kinds of contracts irrespective of their nature.

- Special contracts are contained in Sections 124 to 238 of the Indian Contract Act. These special contracts are Indemnity, Guarantee, Bailment, pledge and Agency.

Note: In our discussion on this part of the book, unless otherwise stated, the sections mentioned are those of the Indian Contract Act, 1872.

1. Offer(i.e. Proposal) [section 2(a)]:-When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a proposal.
2. Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.
3. Promise 2(b) :- A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.
4. Promisor and promisee 2(c) :- When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.
5. Consideration 2(d):- When at the desire of the promisor, the promisee or any other person has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

Price paid by the one party for the promise of the other Technical word meaning QUIDPRO-QUO i.e. something in return.
6. Agreement 2(e) :- Every promise and set of promises forming the consideration for each other. In short, agreement = offer + acceptance.
7. Contract 2(h) :- An agreement enforceable by Law is a contract.
8. Void agreement 2(g):- An agreement not enforceable by law is void.
9. Voidable contract 2(i):- An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.
10. Void contract: - A contract which ceases to be enforceable by Law becomes void when it ceases to be enforceable.

“All agreements are contracts, if they are made –

- by free consent of the parties, competent to contract,
- for a lawful consideration and
- with a lawful object, and
- not hereby expressly declared to be void.”

Meaning of Undue Influence:

Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other.

A person is deemed to be in that position:

(a) where he holds real or apparent authority over the other or stands in a fiduciary relation to him;

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress.

(c) where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)]. Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable. If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of under influence would not be raised.

In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.

Question 2

'A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of Rs.50,000. One month later A revokes the guarantee, when C had lent to B Rs.5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan. What would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. Rs.5,000? (Nov. 2002)

Answer

The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice : A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

The liability of the surety for previous transactions however remains.

Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.

Answer in the second case would differ i.e. A is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

Question 3

State the grounds upon which a contract may be discharged under the provisions of Indian Contract Act, 1872 (Nov. 2002)

Answer

Discharge of a Contract:

A Contract may be discharged either by an act of parties or by an operation of law which may be enumerated as follows:

(1) Discharge by performance which may be actual performance or tender of performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance. It amounts to attempted performance or tender:

(2) Discharge by mutual agreement : Section 62 of the Indian Contract Act, 1872 provides if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.

(3) Discharge by impossibility of performance: The impossibility may exist from its initiation.

Alternatively, it may be supervening impossibility which may take place owing to (a). Unforeseen change in law (b). The destruction of subject matter (c). The non-existence or non-occurrence of particular state of things d).

The declaration of war (Section 56).

(4) Discharge by lapse of time : A contract should be performed within a specific period as prescribed in the Law of Limitation Act, 1963. If it is not performed the party is deprived of remedy at law.

(5) Discharge by operation of law : It may occur by death of the promisor, by insolvency etc.

(6) Discharge by breach of contract : Breach of contract may be actual breach of contract or anticipatory breach of contract. When a person repudiates a contract before the stipulated time, for its performance has arrived, it is an anticipatory breach. If one of the parties to a contract breaks the contract the party injured thereby has a right of action for damages as well as he is also discharged from performing his part of the contract (Section 64).

(7) A promisee may dispense with or remit the performance of the promise made to him or may accept any satisfaction he thinks fit. In the first case, the contract will be discharged by remission and in the second it is accord and satisfaction (Section 63).

(8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

Status of a Finder of Goods & his Rights:

A person, who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in goods will vest with the finder and he can retain the goods as his own against the whole world (except the owner, of course).

A finder of goods has the following rights under the Indian Contract Act, 1872

1. Right of lien: The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation (Section 168).

2. Right to sue for reward. The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168)

3. Right of resale: The finder has a right to sell the goods in the following cases:

(a) where the goods found is in danger of perishing;

(b) where the owner cannot, with reasonable diligence, be found out;

- (c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and
- (d) where the lawful charges of the finder, in respect of the goods found, amount to 2/3rd of its value.

Determining Agency & Agent

The test for determining whether a person is or is not an agent is whether that person has the capacity to bind the principal and make him answerable to a third person by bringing him (the principal) into legal relations with the third person and thus establish a privacy of contract between the party and the principal. If yes, he is agent, otherwise not. This relationship of agency may be created either by express agreement or by implication:

Under the following circumstances an agent is personally liable.

1. When he represents that he has authority to act on behalf of his principal, but who does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratifies his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
2. Where a contract is entered into by a person apparently in the character if agent, but in reality on his own account, he is not entitled to required performance of it.
3. Where the contract expressly provides for the personal liability of the agent.
4. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
5. Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
6. Where the agent works for a foreign principal.
7. Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).
8. Where according to the usage of trade in certain kinds of business, agents are personally liable.

Misrepresentation & the Problem: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.

2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice. 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Problem:

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

Agency by Ratification; its effect & essentials of valid ratification:

Meaning: A person may act on behalf on another without his knowledge or consent. Later on such another person may accept the act of the former or reject it. If he accepts the act of the former done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been the former had later's authority at the time he made the contract. Likewise, when an agent exceeds the authority bestowed upon him by the principal, the principal may ratify the unauthorised act.

Effect of Ratification: The effect of ratification is to tender the acts done by one person (agent) on behalf of another (principal), without his (principal's) knowledge or authority, as binding on the other person (principal) as if they had been performed by his authority (Section 196: Indian Contract Act, 1872).

Further, ratification relates back to the date when the act was done by the agent. This means the agency comes into existence from the moment the agent first acted and not from the time when the principal ratified the act.

Essentials of a valid Ratification

1. The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
2. The principal must be in existence at the time of contract.
3. The principal must have contractual capacity both at the time of the contract and at the time of ratification.
4. The principal must have the full knowledge of all the material facts.
5. Ratification must be done within a reasonable time of the act purported to be ratified.
6. The act to be ratified must be lawful and not void or illegal or ultra vires in case of a company.

7. The whole transaction can be ratified.
8. Ratification must be communicated to the party who is sought to be bound by the act done by the agent.
9. Ratification can be of the acts which the principal had the power to do.
10. Ratification should not put a third party to damages.
11. Ratification relates back to the date of the act of the agent.

Interpretation of The Indian Contract Act, 1872

1. When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
2. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
3. The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";
4. When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
5. Every promise and every set of promises, forming the consideration for each other, is an agreement;
6. Promises, which form the consideration or part, of the consideration for each other are called reciprocal promises;
7. An agreement not enforceable by law is said to be void;
8. An agreement enforceable by law is a contract;
9. An agreement which is enforceable by law at the option of one or more of the parties - thereto, but not at the option of the other or others, is a voidable contract;
10. A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Contract

The term 'Contract' has been defined in Section 2(h) of the Indian Contract Act, 1872. It defines the Contract as an agreement enforceable by law.

An agreement cannot become a contract unless it can be enforceable by law. To be enforceable by law, a contract must contain all the essential elements of a valid contract as defined in Section 10.

According to Section 10, "All agreements are contracts, if they are made by the free consent of the parties, competent to contract, for a lawful consideration, with a lawful object and are not expressly declared by the Act to be void.

Essential Elements of a Contract

Essential Elements of a Contract as defined in Section 10 of the Indian Contract Act 1872

1. Agreement - Offer and Acceptance
2. Legal purpose
3. Lawful Consideration
4. Capacity to contract
5. Consent to contract
6. Lawful object
7. Certainty
8. Possibility of Performance
9. Not expressly declared void
10. Legal formalities like Writing, Registration etc.

All the above ingredients must be satisfied in every valid contract. It can be noted that all contracts are agreements, but not all agreements are contracts.

Offer

Section 2(a) of the Indian Contract Act, 1872 defines the term "Proposal" as when one person signifies to another his willingness to do or to abstain from doing something with a view to obtaining the assent of the other to such an act or abstinence, he is said to make a proposal. The person making the 'proposal' or 'offer' is called the 'promisor' or 'offeror', the person to whom the offer is made is called the 'offeree'.

Acceptance

Acceptance means the expression of assent to whom the proposal is made in a Contract. Acceptance may be expressed either by conduct or by implied circumstances. However, silence cannot be prescribed as a mode of acceptance.

Consideration

Section 10 of the Indian Contract Act states Consideration as one of the essential elements to constitute a contract.

Consideration means 'something in return'. According to section 2(d) of the Indian Contract Act, "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee."

Capacity to Contract

Section 11 of the Indian Contract Act provides the requirements for competency of the parties to the contract.

It says, "Every person is competent to contract, who is of the age of majority, according to law, which he is subject to also who is of sound mind and who is not disqualified from contracting by any law to which he is the subject"

Disqualifications

1. An incorporated company cannot be part of contract.
2. A minor is also incompetent to enter into a contract subject to certain exceptions
3. Mental in capacity. Section 12 says "A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgement to its effect upon his interests"
 1. A person who suffers from insanity at intervals can enter into a contract, when he is of sound mind.
 2. A person who suffers from insanity occasionally cannot enter into a contract, when he is of unsound mind.

Quasi-Contracts

Under special circumstances, obligations resembling those created by a contract are imposed by law although there is no contract between the parties. Such contracts are called Quasi-Contracts.

Sections 68 to 72 deal with Quasi-Contractual Obligations.

1. Claim for Necessaries supplied to a person incapable of contracting or on his account
2. Reimbursement of person paying money due by another, in payment of which he is interested
3. Obligation of person enjoying benefit of non-gratuitous act
4. Responsibility of finder of goods

5. Liability of person to whom money is paid, or thing delivered by mistake or under coercion.

Discharge of Contract

A Contract may be discharged in any of the following ways

1. Discharge by Performance.
2. Discharge by Mutual Consent or Agreement
 1. Novation - When a new contract is substituted for an existing contract
 2. Alteration
 3. Rescission
 4. Remission - Accepting the lesser sum of amount than what was contracted for
3. Discharge by subsequent illegality or impossibility
 1. Destruction of Subject-matter
 2. Failure of ultimate purpose
 3. Death or personal incapacity of Promisor
 4. Change of Law
4. Discharge by lapse of time
5. Discharge by operation of law
6. Discharge by breach of contract
 1. Anticipatory breach
 2. Actual breach

Sale of Goods Act, 1930

Features

The Act deals with provisions related to the contract of sale of goods

The Act deals with provisions of 'sale' but not of 'mortgage' or 'pledge' which come under the purview of Transfer of Property Act, 1882.

The Act deals with 'goods' but not of all movable goods (ex: actionable claims, money etc.)

SALE OF GOODS ACT, 1930

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. It has to be read as part of the Indian Contract Act, 1872 [Sections 2(5) and (3)].

Contract of Sale of Goods

According to Section 4, a contract of sale of goods is a contract whereby the seller:

- (i) transfers or agrees to transfer the property in goods
- (ii) to the buyer,
- (iii) for a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions to be fulfilled later on.

The following are thus the essentials of a contract of sale of goods:

- (i) *Bilateral contract*: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.
- (ii) *Transfer of property*: The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.
- (iii) *Goods*: The subject matter must be some goods.
- (iv) *Price or money consideration*: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.
- (v) All essential elements of a valid contract must be present in a contract of sale.

Distinction between Sale and Agreement to Sell

The following points will bring out the distinction between sale and an agreement to sell:

- (a) In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfilment of some conditions subject to which the property in the goods is to be transferred.
- (b) An agreement to sell is an executory contract, a sale is an executed contract.
- (c) An agreement to sell is a contract pure and simple, but a sale is contract plus conveyance.
- (d) If there is an agreement to sell and the goods are destroyed by accident, the loss falls on the seller. In a sale, the loss falls on the buyer, even though the goods are with the seller.
- (e) If there is an agreement to sell and the seller commits a breach, the buyer has only a personal remedy against the seller, namely, a claim for damages. But if there

has been a sale, and the seller commits a breach by refusing to deliver the goods, the buyer has not only a personal remedy against him but also the other remedies which an owner has in respect of goods themselves such as a suit for conversion or detinue, etc.

Sale and Bailment

A "bailment" is a transaction under which goods are delivered by one person (the bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished (Section 148 of the Indian Contract Act, 1872).

The property in the goods is not intended to and does not pass on delivery though it may sometimes be the intention of the parties that it should pass in due course. But where goods are delivered to another on terms which indicate that the property is to pass at once the contract must be one of sale and not bailment.

Sale and Contract for Work and Labour

The distinction between a "sale" and a "contract for work and labour" becomes important when question of passing of property arises for consideration.

However, these two are difficult to distinguish. The test generally applied is that if as a result of the contract, property in an article is transferred to one who had no property therein previously, for a money consideration, it is a sale. where it is otherwise it is a contract for work and labour.

Sale and Hire Purchase Agreement

"Sale", is a contract by which property in goods passes from the seller to the buyer for a price.

A "hire purchase agreement" is basically a contract of hire, but in addition, it gives the hirer an option to purchase the goods at the end of the hiring period. Consequently, until the final payment, the hirer is merely a bailee of goods and ownership remains vested in the bailor. Under such a contract, the owner of goods delivers the goods to person who agrees to pay certain stipulated periodical payments as hire charges. Though the possession is with the hirer, the ownership of the goods remains with the original owner. The essence of hire purchase agreement is that there is no agreement to buy, but only an option is given to the hirer to buy by paying all the instalments or put an end to the hiring and return the goods to the owner, at any time before the exercise of the option.

Since the hirer does not become owner of the goods until he has exercised his option to buy, he cannot pass any title even to an innocent and *bona fide* purchaser. The transaction of hire-purchase protects the owner of the goods against the insolvency of the buyer, for if the buyer becomes insolvent or fails to pay the instalments, he can take back the goods, as owner. And if the hirer declines to take delivery of the goods, the remedy of the owner will be in damages for non-hiring and not for rent for the period agreed.

It is important to note the difference between a hire purchase agreement and mere payment of the price by instalments, because the latter is a sale, only the payment of price is to be made by instalments.

The distinction between the two is very important because, in a hire-purchase agreement the risk of loss or deterioration of the goods hired lies with the owner and the hirer will be absolved of any responsibility therefore, if he has taken reasonable care to protect the same as a bailee. But it is otherwise in the case of a sale where the price is to be paid in instalments.

Subject matter of Contract of Sale of Goods

Goods

The subject matter of the contract of sale is essentially goods. According to Section 2(7) "goods" means every kind of movable property' other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Actionable claims and money are not goods and cannot be brought and sold under this Act. Money means current money, i.e., the recognised currency in circulation in the country, but not old and rare coins which may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned. Under the provisions of the Transfer of Property Act, 1882, goodwill, trade marks, copyrights, patents are all goods, so is a ship. As regards water, gas, electricity, it is doubtful whether they are goods (*Rash Behari v. Emperor*, (1936) 41 C.W.N.225; *M.B. Electric Supply Co. Ltd. v. State of Rajasthan*, AIR (1973) Raj. 132).

Goods may be (a) existing, (b) future, or (c) contingent. The existing goods may be (i) specific or generic, (ii) ascertained or unascertained.

Existing Goods

Existing goods are goods which are either owned or possessed by the seller at the time of the contract. Sale of goods possessed but not owned by the seller would be by an agent or pledgee.

Existing goods are specific goods which are identified and agreed upon at the time of the contract of sale. Ascertained goods are either specific goods at the time of the contract or are ascertained or identified to the contract later on i.e. made specific.

Generic or unascertained goods are goods which are not specifically identified but are indicated by description. If a merchant agrees to supply a radio set from his stock of radio sets, it is a contract of sale of unascertained goods because it is not known which set will be

delivered. As soon as a particular set is separated or identified for delivery' and the buyer has notice of it, the goods are ascertained and become specific goods.

Future Goods

Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. A agrees to sell all the mangoes which will be produced in his garden next season. This is an agreement for the sale of future goods. [Section 2(6)]

, Contingent Goods

Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen - such goods are known as contingent goods. Contingent goods fall in the class of future goods. A agrees to sell a certain TV set provided he is able to get it from its present owner. This is an agreement to sell contingent goods. In such a case, if the contingency- does not happen for no fault of the seller, he will not be liable for damages.

Actual sale can take place only .of specific goods and property in goods passes from the seller to buyer at the time of the contract, provided the goods are in a deliverable state and the contract is unconditional.

There can be an agreement to sell only in respect of future or contingent goods.

Effect of Perishing of Goods

In a contract of sale of goods, the goods may perish before sale is complete. Such a stage may arise in the following cases:

(i) Goods perishing before making a contract

Where in a contract of sale of specific goods, the goods without the knowledge of the seller have, at the time of making the contract perished or become so damaged as no longer to their description in the contract, the contract is void. This is based on the rule that mutual mistake of fact essential to the contract renders the contract void. (Section 7)

If the seller was aware of the destruction and still entered into the contract, he is estopped from disputing the contract. Moreover, perishing of goods not only includes loss by theft but also where the goods have lost their commercial value.

(ii) Goods perishing after agreement to sell

Where there is an agreement to sell specific goods and subsequently, the goods without any fault of any party perish or are so damaged as *no* longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided. The provision applies only to sale of specific goods. If the sale is of unascertained goods. the perishing of the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver. (Section 8)

Price

No sale can take place without a price. Thus, if there is no valuable consideration to support a voluntary surrender of goods by the real owner to another person, the transaction is a gift, and is not governed by the Sale of Goods Act. Therefore, price, which is money consideration for the sale of goods, constitutes the essence for a contract of sale. It may be money actually paid or promised to be paid. If a consideration other than money is to be given, it is not a sale.

Modes of Fixing Price (Sections 9 and 10)

The price may be fixed:

- (i) at the time of contract by the parties themselves, or
- (ii) may be left to be determined by the course of dealings between the parties, or
- (iii) may be left to be fixed in some way stipulated in the contract, or
- (iv) may be left to be fixed by some third-party.

Where the contract states that the price is to be fixed by a third-party and he fails to do so, the contract is void. But if the buyer has already taken the benefit of the goods, he must pay a reasonable price for them. If the third-party's failure to fix the price is due to the fault of one of the parties, then that party is liable for an action for damages.

Where nothing is said by the parties regarding price, the buyer must pay a reasonable price, and the market price would be a reasonable price.

Conditions and Warranties (Sections 10-17)

The parties are at liberty to enter into a contract with any terms they please. As a rule, before a contract of sale is concluded, certain statements are made by the parties to each other. The statement may amount to a stipulation, forming part of the contract or a mere expression of opinion which is not part of the contract. If it is a statement by the seller on the reliance of which the buyer makes the contract, it will amount to a stipulation. If it is a mere commendation by the seller of his goods it does not amount to a stipulation and does not give the right of action.

The stipulation may either be a condition or a warranty. Section 12 draws a clear distinction between a condition and a warranty. Whether a stipulation is a condition or only a warranty is a matter of substance rather than the form of the words used. A stipulation may be a condition though called a warranty and *vice versa*.

Conditions

If the stipulation forms the very basis of the contract or is essential to the main purpose of the contract, it is a condition. The breach of the condition gives the aggrieved party a right to treat the contract as repudiated. Thus, if the seller fails to fulfil a condition, the buyer may treat the contract as repudiated, refuse the goods and, if he has already paid for them, recover the price. He can also claim damages for the breach of contract.

Warranties

If the stipulation is collateral to the main purpose of the contract, i.e. is a subsidiary promise, it is a warranty. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the contract but can only claim damages. Thus, if the seller does not fulfil a warranty, the buyer must accept the goods and claim damages for breach of warranty.

Section 11 states that the stipulation as to time of payment are not to be deemed conditions (and hence not to be of the essence of a contract of sale) unless such an intention appears from the contract. Whether any other stipulation as to time (e.g., time of delivery) is the essence of the contract or not depends on the terms of the contract.

When condition sinks to the level of warranty

In some cases a condition sinks or descends to the level of a warranty. The first two cases depend upon the will of the buyer, but the third is compulsory and acts as estoppel against him.

- (a) A condition will become a warranty where the buyer waives the condition, or
- (b) A condition will sink to the level of a warranty where the buyer treats the breach of condition as a breach of warranty; or
- (c) Where the contract is indivisible and the buyer has accepted the goods or part thereof, the breach of condition can only be treated as breach of warranty: The buyer can only claim damages and cannot reject the goods or treat the contract as repudiated.

Sometimes the seller may be excused by law from fulfilling any condition or warranty and the buyer will not then have a remedy in damages.

Implied Warranties/Conditions

Even where no definite representations have been made, the law implies certain representations as having been made which may be warranties or conditions. An express warranty or condition does not negative an implied warranty or condition unless inconsistent therewith.

There are two implied warranties:

Implied Warranties [Section 14(b), 14(c) and 16(3)]

(a) *Implied warranty of quiet possession*: If the circumstances of the contract are such as there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

(b) *Implied warranty against encumbrances*: There is a further warranty that the goods are not subject to any right in favour of a third-party, or the buyer's possession shall not be disturbed by reason of the existence of encumbrances.

This means that if the buyer is required to, and does discharge the amount of the encumbrance, there is breach of warranty, and he is entitled to claim damages from the seller.

Implied Conditions [Sections 14(a), 15(1), (2), 16(1) and Proviso 16(2), and Proviso 16(3) and 12(b) and 12(c)].

Different implied conditions apply under different types of contracts of sale of goods, such as sale by description, or sale by sample, or sale by description as well as sample. The condition, as to title to goods applies to all types of contracts, subject to that there is apparently no other intention.

Implied Conditions as to title

There is an implied condition that the seller, in an actual sale, has the right to sell the goods, and, in an agreement to sell, he will have to it when property is to pass. As a result, if the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the full price paid by him.

In *Rowland v. Divali* (1923) 2 K.B. SOD, 'A' had bought a second hand motor car from 'B' and paid for it. After he had used it for six months, he was deprived of it because the seller had no title to it. It was held that 'A' could recover the full price from 'B' even though he had used the car for six months, as the consideration had totally failed.

Implied conditions under a sale by description

In a sale by description there are the following implied conditions:

- (a) *Goods must correspond with description*: Under Section 15, when there is a sale of goods by description, there is an implied condition that the goods shall correspond with description.

In a sale by description, the buyer relies for his information on the description of the goods given by the seller, e.g. in the contract or in the preliminary negotiations.

Where 'A' buys goods which he has not seen, it must be sale by description, e.g., where he buys a 'new Fiat car' from 'B' and the car is not new, he can reject the car.

Even if the buyer has seen the goods, the goods must be in accordance with the description (*Beale v. Taylor* (1967) All E.R. 253).

- (b) *Goods must also be of merchantable quality*: If they are bought by description from dealer of goods of that description. [Section 16(2)].

Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them. 'P' bought black yarn from 'O' and, when delivered, found it damaged by the white ants. The condition of merchantability was broken.

But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. If, however, examination by the buyer does not reveal the defect, and he approves and accepts the goods, but when put to

work, the goods are found to be defective, there is a breach of condition of merchantable quality.

The buyer is given a right to examine the goods before accepting them. But a mere opportunity without an actual examination, however, cursory, would not suffice to deprive him of this right.

(c) *Condition as to wholesomeness*: The provisions, (i.e., eatables) supplied must not only answer the description, but they must also be merchantable and wholesome or sound. 'F' bought milk from 'A' and the milk contained typhoid germs. 'F's wife became infected and died. 'A' was liable for damages. Again, 'C' bought a bun at 'M's bakery, and broke one of his teeth by biting on a stone present in the bun. 'M' was held liable.

(d) *Condition as to fitness for a particular purpose*: Ordinarily, in a contract of sale, there is no implied warranty or condition as to the quality of fitness for any particular purpose of goods supplied.

But there is an implied condition that the goods are reasonably fit for the purpose for which they are required if:

- (i) the buyer expressly or impliedly makes known the intended purpose, so as to show that he relies on the seller's skill and judgement, and
- (ii) the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not). There is no such condition if the goods are bought under a patent or trade name.

In *Priest v. Last* (1903) 2 K.B. 148, a hot water bottle was bought by the plaintiff, a draper, who could not be expected to have special skill knowledge with regard to hot water bottles, from a chemist, who sold such articles. While being used by the plaintiff's wife, the bottle bursted and injured her. *Held*, the seller was responsible for damages.

In *Grant v. Australian Knitting Mills* (1936) 70 MLJ 513, 'G' purchased woollen underpants from 'M' a retailer whose business was to sell goods of that description. After wearing the underpants, G developed some skin diseases. *Held*, the goods were not fit for their only use and 'G' was entitled to avoid the contract and claim damages.

Implied conditions under a sale by sample (Section 15)

In a sale by sample:

- (a) there is an implied condition that the bulk shall correspond with the sample in quality;
- (b) there is another implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) it is further an implied condition of merchantability, as regards latent or hidden defects in the goods which would not be apparent on reasonable examination

of the sample. "Worsted coating" quality equal to sample was sold to tailors, the cloth was found to have a defect in the fixture rendering 'the same unfit for stitching into coats. The seller was held liable even though the same defect existed in the sample, which was examined.

Implied conditions in sale by sample as well as by description

In a sale by sample as well as by description, the goods supplied must correspond both with the samples as well as with the description. Thus, in *Nichol v. Godis (1854)* 158 E.R. 426, there was a sale of "foreign refined rape-oil having warranty only equal to sample". The oil tendered was the same as the sample, but it was not "foreign refined rape-oil" having a mixture of it and other oil. It was held that the seller was liable, and the buyer could refuse to accept.

Implied Warranties

Implied warranties are those which the law presumes to have been incorporated in the contract of sale in spite of the fact that the parties have not expressly included them in a contract of sale. Subject to the contract to the contrary, the following are the implied warranties in the contract of sale:

- (i) *Warranty as to quiet possession*: Section 14(b) provides that there is an implied warranty that the buyer shall have and enjoy quiet possession of goods'. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer is entitled to hold the seller liable for breach of warranty.
- (ii) *Warranty as to freedom from encumbrances*: Section 14(c) states that in a contract for sale, there is an implied warranty that the goods shall be so free from any charge or encumbrances in favor of any third party not declared or known to the buyer before or at the time when the contract is made'. But, if the buyer is aware of any encumbrance on the goods at the time of entering into the contract, he will not be entitled to any compensation from the seller for discharging the encumbrance.
- (iii) *Warranty to disclose dangerous nature of goods*: If the goods are inherently dangerous or likely to be dangerous and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger:
- (iv) *Warranties implied by the custom or usage of trade*: Section 16(3) provides that an implied warranty or conditions as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Doctrine of Caveat Emptor

The term *caveat emptor* is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. Section 6 provides that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of

goods supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of *Ward v. Hobbs*. (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs.

Exceptions to the doctrine of *Caveat Emptor*:

- (1) Where the seller makes a false representation and the buyer relies on it.
- (2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.
- (3) When the buyer, relying upon the skill and judgement of the seller, has Expressly or impliedly communicated to him the purpose for which the goods are required.
- (4) Where goods are bought by description from a seller who deals in goods of that description.

Passing of Property or Transfer of Ownership (Sections 18-20)

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. It is important to know the precise moment of time at which the property in the goods passes from the seller to the buyer for the following reasons:

- (a) The general rule is that risk follows the ownership, whether the delivery has been made or not. If the goods are lost or damaged by accident or otherwise, then, subject to certain exceptions, the loss falls on the owner of the goods at the time they are lost or damaged.
- (b) When there is a danger of the goods being damaged by the action of third parties it is generally the owner who can take action.
- (c) The rights of third parties may depend upon the passing of the property if the buyer resells the goods to a third-party, the third-party will only obtain a good title if the property in the goods has passed to the buyer before or at the time of the resale. Similarly, if the seller, in breach of his contract with the buyer, attempts to sell the goods to a third party in the goods, has not passed to the buyer, e.g., where there is only an agreement to sell.

(d) In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

Thus in this context, ownership and possession are two distinct concepts and these two can at times remain separately with two different persons.

Passing of property in specific goods

In a sale of specific or ascertained goods, the property passes to the buyer as and when the parties intended to pass. The intention must be gathered from the terms of the contract, the conduct of the parties, and the circumstances of the case.

Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:

- (a) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property passes to the buyer when the contract is made. Deliverable state means such a state that the buyer would be bound to take delivery of the goods. The fact that the time of delivery or the time of payment is postponed does not prevent the property from passing at once. (Section 20)
- (b) Where there is a contract for the sale of specific goods not in a deliverable state, i.e., the seller has to do something to the goods to put them in a deliverable state, the property does not pass until that thing is done and the buyer has notice of it. (Section 21)

A certain quantity of oil was brought. The oil was to be filled into casks by the seller and then taken away by the buyer. Some casks were filled in the presence of buyer but, before the remainder could be filled, a fire broke out and the entire quantity of oil has destroyed, *Held*, the buyer must bear the loss of the oil which was put into the casks (i.e., put in deliverable state) and the seller must bear the loss of the remainder (*Rugg v. Minett* (1809) 11 East ~10).

- (c) Where there is a sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of ascertaining the price, the property to the goods for the purpose of ascertaining the price, does not pass until that thing is done and the buyer has notice of it. (Section 22)
- (d) When goods are delivered to the buyer on approval or "on sale of return", the property therein passes to the buyer:
 - (i) when he signified his approval or acceptance to the seller, or does any other act adopting the transaction;
 - (ii) if he retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods, or if no time is fixed, beyond reasonable time.

Ownership in unascertained goods

The property in unascertained or future goods does not pass until the goods are ascertained.

Unascertained goods are goods defined by description only, for example, 100 quintals of wheat, and not goods identified and agreed upon when the contract is made.

Unless a different intention 'appears, the following rules are applicable for ascertaining the intention of the parties in regard to passing of property in' respect of such goods:

- (a) The property in unascertained or future goods sold by description passes to the buyer when goods of that description and in deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be express~ or implied and may be given either before or after the appropriation is made. (Section 23)
- (b) If there is a sale of a quantity of goods out of a large quantity, for example, 50 quintals of rice out of a heap in B's godown, the property will pass on the appropriation of the specified quantity by one party with the assent of the other.
- (c) Delivery by the seller of the goods to a carrier or other buyer for the purpose of transmission to the buyer in pursuance of the contract is an appropriation sufficient to pass the property in the goods.
- (d) The property in goods, whether specific or unascertained, *does not pass* if the seller reserves a right of disposal of the goods. Apart from an express reservation of the right of disposal, the seller is deemed to reserve the right of disposal in the following two cases:
 - (i) where goods are shipped and by the bill of lading of the goods deliverable to the order or the seller or his agent.
 - (ii) when the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill of exchange.

Passing of Risk (Section 26)

The general rule is that goods remain at the seller's risk until the ownership is transferred to the buyer. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not. For example, 'A' buys goods of 'B' and property has passed from 'B' to 'A': but the goods remain in 'B's warehouse and the price is unpaid. Before delivery, 'B's warehouse is burnt down for no fault of 'B' and the goods are destroyed. 'A' must pay 'B' the price of the goods, as he was the owner. The rule is *resperit demino- the loss falls on the owner*.

But the parties may agree that risk will pass at the time different from the time when ownership passed. For eg. the seller may agree to be responsible for the goods even after the ownership is passed to the buyer or vice versa.

In *Consolidated Coffee Ltd. v. Coffee Board*, (1980 3 SCR 358), one of the terms adopted by coffee board for auction of coffee was the property in the coffee, 'knocked down to a bidder would not pass until the payment of price and in the meantime the goods would remain with the seller but at the risk of the buyer, In such cases, risk and property passes on at different stages.

In *Multanmal Champalal v. Shah & Co.*, AIR (1970) Mysore 106, goods were despatched by the seller from Bombay to Bellary through a public carrier. According to the terms of the contract, the goods were to remain the property of the seller till the price was paid though the risk was to pass to the buyer when they were delivered to public carrier for despatch. When the goods were subsequently lost before the payment of the price (and the consequent to the passing of the property to the buyer), the Court held that the loss was to be borne by the buyer.

It was further held in the same case that the buyer was at fault in delaying delivery unreasonably and therefore on that ground also he was liable for the loss, because such loss would not have arisen but for such delay.

Thus, where delivery has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party at fault, as regards any loss which might not have occurred but for such fault.

Transfer of Title by Person not the Owner (Section 27-30)

The general rule is that only the owner of goods can sell them. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer. The rule is expressed by the maxim; "*Nemo dat quod non habet*" i.e. no one can pass a better title than what he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possess. Thus, even *bona fide* buyer who buys stolen goods from a thief or from a transferee from such a thief can get no valid title to them, since the thief has no title, nor could he give one to any transferee.

Example:

1. A, the hirer of goods under a hire purchase agreement, sells them to B, then B though, a bonafide purchaser, does not acquire the property in the goods. At most he can acquire such an interest as the hirer had.
2. A finds a ring of B and sells it to a third person who purchases it for value and in good faith. The true owner, i.e. B can recover from that person, for A having no title to the ring could pass none the better.

Exception to the General Rule

The Act while recognizing the general rule that no one can give a better title than what he himself has, laid down important exceptions to it. Under the exceptions the buyer gets a better title of the goods than the seller himself. These exceptions are given below:

- (a) *Sale by a mercantile agent*: A buyer will get a good title if he buys in good faith

from a mercantile agent who is in possession either of the goods or' documents of title of goods with the consent of the owner, and who sells the goods in the ordinary course of his business.

- (b) *Sale by a co-owner*: A buyer who buys in good faith from one of the several joint owners who is in sale possession of the goods with the permission of *his co-owners will get good title to the goods.*
- (c) *Sale by a person in possession under a voidable contract*: A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been rescinded at the time of the sale.
- (d) *Sale by seller in possession after sale*: Where a seller, after having sold the goods, continues in possession of goods, or documents of title to the goods and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.
- (e) *Sale by buyer in possession*: If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.
- (f) *Estoppel*: If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third-party's right to sell.
- (g) *Sale by an unpaid seller*: Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.
- (h) *Sale by person under other laws*: A pawnee, on default of the pawnee to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

12. Performance of the Contract of Sale

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, *i.e.*, they both take place at the same time as in a cash sale over a shop counter.,

Delivery (Sections 33-39)

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorised to take possession of the goods. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the "means of obtaining possession" of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

Rules as to delivery

The following rules apply regarding delivery of goods:

- (a) Delivery should have the effect of putting the buyer in possession.
- (b) The seller must deliver the goods according to the contract.
- (c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.
 - (d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.
- (e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.
- (f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract. of sale and if not then in existence they are to be delivered at the price they are produced.
- (g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.
- (h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.

- (i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

Acceptance of Goods by the Buyer

- Acceptance of the goods by the buyer takes place when the buyer: (a) intimates to the seller that he has accepted the goods; or
- (b) retains the goods, after the lapse of a reasonable time without intimating to *the seller that he has rejected them; or*
 - (c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells. If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:
 - (a) reject the whole; or
 - (b) accept the whole; or
 - (c) accept the quantity be ordered and reject the rest.

If the seller delivers, with the goods ordered goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates to seller that he refuses to accept them. In that case, the seller has to remove them.

Instalment Deliveries

When there is a contract for the sale of goods to be delivered in stated instalments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

Suits for Breach of Contract

Were the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods.

He can set breach of warranty in extinction or diminution of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the Court that the specific goods ought to be delivered.

Anticipatory Breach

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may, either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

- (a) his right of performance on the due date in spite of his prior repudiation or
- (b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

Measure of Damages

The Act does not specifically provide for rules as regards the measure of damages except stating that nothing in the Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law they are entitled to the same. The inference is that the rules laid down in Section 73 of the Indian Contract Act will apply.

Unpaid Seller (Sections 45-54)

Who is an unpaid seller? (Section 45)

The seller of goods is deemed to be unpaid seller:

- (a) When the whole of the price has not been paid or tendered; or
- (b) When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonoured.

Rights of an Unpaid Seller against the Goods

An unpaid seller's right against the goods are:

- (a) A lien or right of retention
- (b) The right of stoppage in transit.
- (c) The right of resale.
- (d) The right to withhold delivery.

(a) *Lien* (Sections 47-49 and 54) An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to

deliver them to the buyer until the fulfilment or tender of the price in cases where:

- (i) the goods have been sold without stipulation as to credit; or
- (ii) the goods have been sold on credit, but the term of credit has expired; or
- (iii) the buyer becomes insolvent.

The lien depends on physical possession. The seller's lien is *possessory lien*, so

that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost

- (i) When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;
- (iii) By waiver of his lien by the unpaid seller.

(b) *Stoppage in transit* (Sections 50-52) The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller

- (i) when the buyer becomes insolvent; and
- (ii) the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the Court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehousekeeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

- (i) If the buyer obtains delivery before the arrival of the goods at their destination;
- (ii) If, after the arrival of the goods at their destination, the carrier acknowledges

to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer.

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier he must redeliver the goods to the seller, who must pay the expenses of the redelivery.

The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a *bona fide* purchaser for value is valid against the seller's right.

(c) *Right of re-sale* (Section 54): The unpaid seller may re-sell:

(i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;

(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time. '

If on a re-sale, there is a deficiency between the price due and amount realised, the re-seller is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer any profits.

(d) *Rights to withhold delivery*: If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

Rights of an unpaid seller against the buyer (Sections 55 and 56)

An unpaid seller may sue the buyer for the price of the goods in case of breach of contract where the property in the goods has passed to the buyer or he has wrongfully refused to pay the price according to the terms of the contract.

The seller may sue the buyer even if the property in the goods has not passed where the price is payable on a certain day.

Under Section 56, the seller may sue the buyer for damages or breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.

Thus an unpaid seller's rights against the buyer personally are:

(a) a suit for the price.

(b) a :suit for damages.

Auction Sales (Section 64)

A sale by auction is a public sale where goods are offered to be taken by bidders. It is a proceeding at which people are invited to compete for the purchase of property by successive offer of advancing sums.

Section 64 lays down the rules regulating auction sales. Where goods are put up for sale in lots, each, lot is *prima facie* deemed to be the subject of a separate contract of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may retract his bid.

A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly so reserved, the seller or any other person on his behalf may bid at the auction. Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale in contravention of this rule may be treated as fraudulent by the buyer. The sale may be notified to be subject to a reserved price. Where there is such notification, every bid is a conditional offer subject to its being up to the reserve price. Where an auctioneer inadvertently knocks down to a bidder who has bid less than the reserved price, there is no contract of sale. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Trading Contracts involving rail or Sea Transit

In the case of a contract for the sale of goods which are to be shipped by sea a number of conditions are attached by the parties or by custom and practice of merchants. Some of the important types of such contracts are given below:

(a) F.O.B(Free on Board): Under an F.O.B. contract, it is the duty of the seller to put the goods on board a ship at his own expenses. The property in goods passes to the buyer only after the goods have been put on board the ship, usually named by the buyer. The seller must notify the buyer immediately that the goods have been delivered on board, so that the buyer may insure them. If he fails to do so the goods shall be deemed to be at seller's risk during such sea transit.

(b) F.O.R.(Free on Rail): Similar position prevails in these contracts as in the case of F.O.B

contracts.

(c) C

.I.F. or C.F.I. (Cost insurance and freight): A CIF contract is a contract for the sale of insured goods lost or not lost to be implemented by transfer of proper documents.

In such types of contracts, the seller not only bears all the expenses of putting the goods on board the ship as in an F.O.B. contract but also to bear the freight and insurance charges. He will arrange for an insurance of the goods for the benefit of the buyer.

On the tender of documents, the buyer is required to pay and then take delivery. He has a right to reject the goods if they are not according to the contract.

(d) Ex-Ship: Here the seller is bound to arrange the shipment of the goods to the port of destination, and to such further inland destination as the buyer may stipulate. The buyer is not bound to pay until the goods are ready for unloading from the ship and all freight charges paid. The goods travel at the seller's risk but he is not bound to insure them.

THE INDIAN PARTNERSHIP ACT, 1932. (ACT NO.9 OF 1932) (8th April,1932)

An Act to define and amend the law relating to partnership.

WHEREAS it is expedient to define and amend the law relating to partnership, It is hereby an acted as follows:

CHAPTER - I- PRELIMINARY

1. Short title extend and commencement - (1) This Act may be called the Indian partnership Act. 1932.

2. It extends to the whole of India except the State of Jammu & Kashmir.

3. It shall come into force on the 1st day of October, 1932, except Sec. 69 which shall come into force on the 1st day

October, 1933.

2. Definitions - In this Act, unless there is anything repugnant in the subject or context -

a) An " act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm":

b) " business" includes every trade, occupation and profession.

c) "Prescribed" means prescribed by rules made under this Act"

d) "Third party " used in relation to a firm or to a partner therein means any person who is not a partner in the firms" and

e) expression used but not defined in this Act and defined in the Indian

3. Application of provisions of Act 9 of 1872 - The unrepealed provisions of the Indian contract Act, 1872 , save in so far as they are inconsistent with the express provision of this act, shall continue to apply to firms.

- Partnership is an association of persons carrying business & in law the firm name is compendious method of describing partners-

Deoha F.Guzdar Bombay us C.I.T. Air, 1955 SC 74.

5- Partnership not created by status- The relation of partnership arises from contract and not from status: and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business.

6. Mode of determining extence of partnership - In determining whether a group of persons is or is not a firm, or whether a person is or is not partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation- 1. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation- 2 The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business ; and in, particular, the receipt of such share or payment -

a) by a lender of money to persons engaged or about to engage in any business.

b) by a servant or agent as remuneration.

c) by the widow or child of a deceased partner, as annuity,

or

d) by a previous owner or part owner of the business , as consideration for the sale of the goodwill or share thereof. does not of itself make the receiver a partner with the persons carrying on the business.

7. Partnership at will - Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "Partnership at will"

8. Particular partnership - A person may become a partner with another person in particular adventures or undertakings
CHAPTER -III RELATIONS OF PARTNERS TO ONE ANOTHER

9. General Duties of partners- Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud- Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

11. Determination of rights and duties of partners by contract between the partners: (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

2) Agreements in restraints of trade- Notwithstanding anything contained in Sec. 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

Mutual rights and liabilities - Subject to contract between the partners -

a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

b) The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm.

c) Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits.

d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent, per annum

e) The firm shall indemnify a partner in respect of payments made and liabilities incurred by him.

i) In the ordinary and proper conduct of the business, and

ii) In doing such act, in an emergency, for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances and

f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

NO. 42 OF 1999 [29th December, 1999.]

An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India

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

CHAPTER I

PRILIMINARY

1. Short title, extent, application and commencement.- (1) This Act may be called the Foreign Exchange Management Act, 1999.

(2) It extends to the whole of India.

(3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies.

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

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

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "Adjudicating Authority" means an officer authorized under sub-section (1) of section 16

(b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18;

(c) "authorized person" means an authorized dealer, money changer, off-shore banking unit or any

other person for the time being authorized under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;

(d) "Bench" means a Bench of the Appellate Tribunal;

(e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

LEGAL & REGULATORY ASPECTS OF BANKING

(g) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accounts Act, 1949 (38 of 1949);

(h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(i) "currency notes" means and includes cash in the form of coins and bank notes;

(j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,-

(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(k) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1)

of section 36;

(l) "export", with its grammatical variations and cognate expressions, means-

(i) the taking out of India to a place outside India any goods,

(ii) provision of services from India to any person outside India;

(m) "foreign currency" means any currency other than Indian currency;

(n) "foreign exchange" means foreign currency and includes,-

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

(o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes

securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(p) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;

(q) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve

Bank of India Act, 1934 (2 of 1934);

(r) "legal practitioner" shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

(s) "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof;

(t) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;

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(u) "person" includes-

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by such person;

(v) "person resident in India" means-

(i) a person residing in India for more than one hundred and eighty-two days during the course of

the preceding financial year but does not include-

(A) a person who has gone out of India or who stays outside India, in either case-

- (a) for or on taking up employment outside India, or
- (b) for carrying on outside India a business or vocation outside India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay outside

India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than-

- (a) for or on taking up employment in India, or
- (b) for carrying on in India a business or vocation in India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(w) "person resident outside India" means a person who is not resident in India;

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

(y) "repatriate to India" means bringing into India the realized foreign exchange and-

(i) the selling of such foreign exchange to an authorized person in India in exchange for rupees, or

(ii) the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank, and includes use of the realized amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

(z) "Reserve Bank" means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(za) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 (18 of 1944), savings certificates to which the Government Savings

Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of

India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;

(zb) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service ;

(zc) "Special Director (Appeals)" means an officer appointed under section 18;

(zd) "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly;

(ze) "Transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

3. Dealing in foreign exchange, etc.- Save as otherwise provided in this Act, rules or regulations made there under, or with the general or special permission of the Reserve Bank, no person shall-

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation.- For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

explanation.-For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

4. Holding of foreign exchange, etc.- Save as otherwise provided in this Act, no person resident in

India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

5. Current account transactions.- Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawl is a current account transaction: Provided that the Central

Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

6. Capital account transactions. - (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify-

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions:

Provided that the Reserve Bank shall not impose any restriction on the drawl of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary courts of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following-

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in rupees in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a

person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

(g) export, import or holding of currency or currency notes;

(h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

(i) acquisition or transfer of immovable property in India, other than a lease not exceeding five

years, by a person resident outside India;

(j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred-

(i) by a person resident in India and owed to a person resident outside India; or

(ii) by a person resident outside India.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

7. Export of goods and services.- (1) Every exporter of goods shall-

(a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such

manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

8. Realization and repatriation of foreign exchange.- Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

9. Exemption from realization and repatriation in certain cases.- The provisions of sections 4 and 8 shall not apply to the following, namely:-

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve

Bank may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up

to which the Reserve Bank may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may

specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

AUTHORISED PERSON

10. Authorised person.- (1) The Reserve Bank may, on an application made to it in this behalf, authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

Right to Information Act

The Right to Information Act (RTI) is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the erstwhile Freedom of Information Act, 2002. The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005.[1] Information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes.

The Act has increased transparency and greater accountability in the functioning of the government and hence played a significant role in exposing and reducing corruption to some extent. It is claimed to promote a "citizen-centric approach to development" and to increase the efficiency of public welfare schemes run by the government.

Under the Act, all authorities covered must appoint their Public Information Officer (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the

Act. If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 working days. In addition, every public authority is required to designate Assistant Public Information Officers (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is not required to disclose any information or reasons other than his name and contact particulars to seek the information.

The Central Information Commission (CIC) acts upon complaints from those individuals who have not been able to submit information requests to a Central Public Information Officer or State Public Information Officer due to either the officer not having been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information.

The Act specifies time limits for replying to the request.

If the request has been made to the PIO, the reply is to be given within 30 days of receipt.

If the request has been made to an APIO, the reply is to be given within 35 days of receipt.

If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is 30 days but computed from the day after it is received by the PIO of the transferee authority.

Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.

However, if life or liberty of any person is involved, the PIO is expected to reply within 48 hours.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge.

Exclusion

Central Intelligence and Security agencies specified in the Second Schedule like IB ,Directorate General of Income tax(Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli

and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

Information

The following is exempt from disclosure under section 8 of the Act:-

Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense;

Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

Information received in confidence from foreign Government;

Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

Information which would impede the process of investigation or apprehension or prosecution of offenders;

Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);

Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. However, this does not apply to disclosure of "trade or commercial secrets protected by law".

Information Technology Act 2000

The Information Technology Act 2000 (also known as ITA-2000, or the IT Act) is an Act of the Indian Parliament (No 21 of 2000) notified on October 17, 2000. This act is being opposed by Save Your Voice campaign and other civil society organizations in India.

Provisions

Information technology Act 2000 consisted of 94 sections segregated into 13 chapters. Four schedules form part of the Act. In the 2008 version of the Act, there are 124 sections (excluding 5 sections that have been omitted from the earlier version) and 14 chapters. Schedule I and II have been replaced. Schedules III and IV are deleted.

Information Technology Act 2000 addressed the following issues:

- Legal Recognition of Electronic Documents
- Legal Recognition of Digital Signatures
- Offenses and Contraventions
- Justice Dispensation Systems for Cybercrimes

The Information Technology (Amendment) Act, 2008

The Government of India has brought major amendments to ITA-2000 in form of the Information Technology Amendment Act, 2008. ITAA 2008 (Information Technology Amendment Act 2008) as the new version of Information Technology Act 2000 is often referred has provided additional focus on Information Security. It has added several new sections on offences including Cyber Terrorism and Data Protection. A set of Rules relating to Sensitive Personal Information and Reasonable Security Practices (mentioned in section 43A of the ITAA, 2008) was released in April 2011.