

CHAPTER – XIV

SPECIAL RECOVERY TRIBUNALS FOR

BANKS AND FINANCIAL INSTITUTIONS

I

BANK NATIONALISATION

a historical event for Indian Banks

For the economic growth and progress of independent India a need was felt that, finance should be made available in non traditional areas like agriculture, rural industries etc. The congress under the leadership of Mrs.Gandhi ^{**1} introduced the scheme of Social Control of banks to achieve the objectives of strengthening the banking system, to check concentration of economic power through equitable distribution of bank credit and to stress the need for extending banking services in rural sector.

The Central Government however was determined to bring radical changes in the banking industry and social control scheme was not found sufficient to achieve this objective because banks were controlled by private industrial houses.

The Government therefore on 19/7/1969 nationalised 14 banks, with deposits of more than Rs.50 crores. Subsequently in 1980, six more banks were nationalised. Thus, almost 90% of the banking activity in India has come under direct control of the Government.

The objectives of Bank Nationalisation were as under :-

- (a) Removal of concentration of economic power in the hands of few.
- (b) Channelisation of credit towards priority sector etc.
- (c) Giving a professional bent to bank management.

^{**1} AICC RESOLUTION – 1967.

- (d) Encouragement of new class of promoters.
- (e) Providing adequate training and reasonable service terms to bank staff.
- (f) Extension of facilities to un banked areas.

After nationalisation banks made tremendous contribution to the Nation's economic growth as is evident from following statistics :-

	<u>PARTICULARS</u>	<u>1969</u>	<u>1993</u>
(i)	No. of Branches	8321	52,387
(ii)	Rural branches	1832	39,089
(iii)	Deposits (Rs.crores)	4672	205,000
(iv)	Advances (Rs.crores)	3614	125,000
(v)	Priority sector Lending (Rs.crores)	411	42,113
	**2, **3		

While the phenomenal growth of Indian banking is really a great achievement, the problems that have arisen pursuant to the same also cannot be ignored in national interest. The Reserve Bank of India is vested with the power and authority to monitor and control banking activity in India, and from time to time investigated this aspect. Various expert committees also examined this issue with great details. **4 **5

**2 SOURCE : (A) REPORT OF STUDY GROUP OF NATIONAL CREDIT COUNCIL.

**3 SOURCE : (B) RBI BULLETIN.

**4 TANDON COMMITTEE REPORT 1976.

**5 RAY COMMITTEE REPORT.

II

THE TIWARI COMMITTEE REPORT – 1984

The Reserve Bank of India appointed Expert Committee under the Chairmanship of Shri T. Tiwari, Chairman, Industrial Reconstruction Corporation of India Limited. One of the main terms of reference included suggesting of measures to expedite the legal process of speedy realisation of dues of banks and financial institutions. This aspect needed detailed scrutiny because large amounts advanced by the banks and financial institutions were locked up due to the delays under the existing legal system. The committee observed **6

"The Civil Courts are burdened with diverse type of cases. Recovery of dues by the banks is not given any priority by the Civil Courts. The banks and financial institutions like any other litigants have to go through the cases for recovery through Civil Courts for unduly long periods. The progress more often gets bogged down through interlocutory petitions and stay orders. Due to the delays involved in such elaborate process the interests of the banks and financial institutions are adversely affected. Attempts therefore should be made to reduce the impact of hazardous procedures presently obtaining for the recovery of dues in so far as the banks and financial institutions are concerned". **7

The Committee examined in detail the particulars of various pending litigations initiated by various banks and financial institutions.

The Committee suggested the following 3 options of speedy recovery of such dues.

- a) To vest powers in favour of the banks and financial institutions similar to those conferred on the IFCI and the State Financial Corporations under their respective Acts.

**6 TIWARI COMMITTEE REPORT, PAGE 75.

**7 TIWARI COMMITTEE REPORT

**8 TIWARI COMMITTEE REPORT, PAGE 76.

- b) To treat the dues of the banks and financial institutions as arrears of land revenue and to entrust the revenue to the State recovery machinery.
- c) To set up in terms of the special legislation, quasi judicial authorities functioning like administrative tribunals, exclusively allotted to adjudicate on issues relating to such recoveries.

A critical evaluation of relative merits and demerits of the options made by the Committee, reveals that the State recovery machinery for recovering land revenue was burdened with recovery of number of public dues and had to perform number of other duties. Besides there were conflicting Court decisions in which , it was held that it is not open to legislature by fiction to treat something which is not land revenue as 'land revenue'. Similarly the overall achievement in terms of IFCI Act and State Financial Corporations Act was not very encouraging.

The Tiwari Committee **10 therefore favored setting up of quasi-judicial bodies like Administrative Tribunals to deal exclusively with recovery of dues of bank/financial institutions. Such tribunals can be established under Article 323 A and 323 B of the Constitution. Such tribunals can try the matters in summary manner. The committee was impressed by functioning of such Tribunals in England and France where disposal rate of tribunals is faster than ordinary Civil Courts. Tribunals for industrial, labour, income tax, revenue, service and cooperative matters existed in India at that time. The Committee therefore suggested that Tribunals which will in a summary way, but following provisions of natural justice finally adjudicate in a time bound schedule the recovery of dues should be established. Such Tribunals should follow simple procedure. No Court fees should be payable. The technicalities also should be avoided. The committee also expressed concern on mounting legal expenses. The committee prepared draft of the Act on basis of which Tribunals can be established.

**9 VENKATASWAMY V/s. TAMILNADU SMALL INDUSTRIES DEVELOPMENT CORPORATION AIR 1981, MADRAS, 318.

**10 PAGE 77, TIWARI COMMITTEE REPORT, RBI PUBLICATION.

III

THE PROVISIONS OF STATE FINANCIAL CORPORATION
ACT, 1951 AND IFCI ACT, 1948 FOR
RECOVERY OF DUES.

Under the Industrial Finance Corporation of India Act **11 the Corporation is vested with vast and wide powers for recovery. Where any industrial concern, which is under a liability to the Corporation under an agreement makes any default in repayment of any loan or advance or any instalments thereof or meeting any obligations under the guarantee given to Corporation, the Corporation has the right to take over management and possession of the concern as well as a right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Corporation. Such transfer is deemed to be a transfer made by the owner of the Company. The costs for such action can also be recovered. The Corporation also has a power to approach the District Court **13 for sale of assets, interim injunction etc and such order can be passed even exparte. The Corporation also can appoint directors on Board of such defaulter company and such decision is binding to the company not withstanding anything to the contrary contained in their Articles.

Similar powers have been vested in State Financial Corporations under the State Financial Corporations Act.

**11 SECTION 28, IFCI ACT, 1948.

**12 SECTION 27, IFCI ACT.

**13 SECTION 30 OF IFCI ACT.

IV

RECOVERY OF DUES UNDER PUBLIC MONIES

RECOVERY OF DUES ACT

After Nationalisation of banks, they were required to lend to the priority sector under the various schemes formulated by the Government. In order to ensure the speedy recovery of such dues as per the recommendations of Talwar Committee, **14 all the State Legislatures passed Acts under which whenever a bank or other approved institution has lent money under a Government sponsored scheme, such amount can be recovered as an arrears of land revenue. The procedure prescribed under the Act is that the manager of bank is required to file Recovery Certificate with the prescribed authority. The prescribed authority will then recover the money after following procedure laid down under the Act.

V

NARSIMHAN COMMITTEE REPORT

The Government of India in 1991 appointed a committee to study the financial system and the banking system under the Chairmanship of Shri M. Narsimhan. The Committee made several recommendations of far reaching consequences and suggested that the banks should classify their assets (ie. advances) into four categories namely standard, sub-standard, doubtful and loss assets on the basis of actual repayment received **15. The Committee made a special reference to the considerable difficulties faced by the banks and financial institutions in recovery of their dues. **16 A significant portion of the funds of banks and financial institutions is blocked in unproductive assets for which litigation is pending and value of such assets deteriorates with the passage of time. The banks also incurred substantial amount of expenditure by way of legal charges adding to the overheads.

**14 TALWAR COMMITTEE REPORTS

**15 SUMMARY OF THE NARSIMHAN COMMITTEE REPORT.

**16 NARSIMHAN COMMITTEE REPORT PAGE 59.

The Committee therefore recommended that Special Tribunals exclusively for the purpose of recovery of dues from banks and financial institutions should be established. The Committee also suggested for creating 'Asset Reconstruction Fund' **17 for taking over the bad and doubtful assets on lines of such funds created in other countries.

VI

SERIOUSNESS OF PROBLEMS OF RECOVERIES OF DUES

Due to applicability of the NPA norms and new Income Recognition norms as prescribed under the Narsimhan Committee Report, several banks reported huge losses as can be seen from the following details **18.

TABLE

(LOSSES INCURRED BY NATIONALISED BANKS)

<u>NAME OF BANK</u>	<u>LOSS SHOWN FOR</u>	<u>CAPITAL CONTRIBUTION</u>
	<u>THE YEAR 1993-94</u>	<u>BY GOVT.</u>
Indian Overseas Bank	752.74	705.00
Syndicate Bank	670.08	680.00
UCO Bank	444.19	535.00
Central Bank of India	383.31	490.00
Bank of India	331.12	635.00
United Bank of India	279.36	200.00
Bank of Maharashtra	196.51	150.00
Andhra Bank	141.09	150.00
Allahabad bank	105.89	90.00
Dena Bank	90.46	130.00
New Bank of India	75.46	85.00
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TOTAL :	3470.21	3850.00

**17 PAGE 61, NARSIMHAN COMMITTEE REPORT.

**18 FINANCIAL EXPRESS, DATED 10/2/94.

The losses as aforesaid were mainly due to Rs.20,000.00 crores involved in the bad debts of banking industry. The Government was required to make a provision of Rs.5700 crores. **19 The Finance Minister in his budget speech stated –

“This is the price we have to pay for having long tolerated management practices in the banks and the type of lending which paid inadequate attention to portfolio quality and recoveries”.**20

The position of sick, suit filed, decreed and recalled advances during the years 1992-93 and 1993-94 and 1993-94 also revealed a very poor picture of the recovery performance of the banks :

TABLE
(DETAILS OF BANK ADVANCES WHERE RECOVERY IS DOUBTFUL)
POSITION OF NO.OF ACCOUNTS AND AMOUNT INVOLVED

	<u>No.of A/c.</u>	<u>Amt.Rs.</u>	<u>AS ON 31/3/94</u>	
			<u>NO.OF A/Cs.</u>	<u>Amt.Rs.</u>
				<u>In crores</u>
Sick Viable	3,15,327	5635.37	3,08,032	5812.33
Sick Nonviable	28,38,534	5208.53	25,78,029	7166.23
Recalled	18,90,434	1847.69	25,24,947	2365.07
Suit filed	8,11,779	3543.39	10,24,620	4071.60
Decreed	4,63,592	849.43	5,21,813	984.94 **21

Finance Minister, Dr.Manmohan Singh who was in charge of banking system and made significant efforts for reviving the economy and the banking system had in one of his public speeches emphasized the need for a grass root change in the approach of all concerned by saying “Reform of Perish”**22

**19 UNION BUDGET FOR 1993-94 PRESENTED BY DR.MANMOHAN SINGH.

**20 DR.MANMOHAN SINGH – UNION BUDGET 1993-94.

**21 SOURCE : INFORMATION GIVEN BY RBI.

**22 BUSINESS TIMES, 27/11/93.

It was in this background that the Government of India passed "The Recovery of Debts Due to Banks and Financial Institutions Act, 1993". The Act came in force with effect from 24th June 1993.

At this juncture the position of suit filed accounts of Banks was as given below :

The number of suit-filed accounts and the amounts involved of each of the public sector banks as at the end of March 1993.

<u>SN.</u>	<u>BANK</u>	<u>NO.OF</u> <u>ACCOUNTS</u>	<u>AMOUNT</u> <u>(RS.IN LACS)</u>
State Bank and Associate Banks			
1.	State Bank of India	61865	25851.00
2.	State Bank of Bikaner and Jaipur	9787	3733.00
3.	State Bank of Hyderabad	17482	6640.00
4.	State Bank of Mysore	52835	7634.00
5.	State Bank of Patiala	3851	3100.00
6.	State Bank of Saurashtra	1947	1213.00
7.	State Bank of Travancore	58532	4848.00
8.	State Bank of Indore	1755	1886.00
		-----	-----
SECTOR :		208054	54905.00

NATIONALISED BANKS

1.	Bank of Baroda	9052	7224.00
2.	Allahabad Bank	95848	14507.00
3.	Bank of India	14799	3600.00
4.	Bank of Maharashtra	19675	12298.00
5.	Canara Bank	106000	26897.00
6.	Dena Bank	20828	10232.21
7.	Indian Bank	28392	17224.00
8.	Indian Overseas Bank	36303	22916.00
9.	Central Bank of India	92877	62800.00
10.	Union Bank of India	17866	4347.03
11.	Punjab National Bank	21581	23700.00
12.	United Bank of India	58452	41370.00
13.	UCO Bank	86043	43525.00
14.	Syndicate Bank	70904	22707.00
15.	Andhra Bank	3221	12039.00
16.	Corporation Bank	5456	2875.00
17.	Oriental Bank of Commerce	23012	1547.00
18.	Punjab and Sind Bank	12489	8435.00
19.	New Bank of India	11736	2050.00
20.	Vijaya Bank	82032	11962.00
		-----	-----
SECTOR TOTAL :		816566	352255.26
GRAND TOTAL :		1024620	407160.26 **23

****23 SOURCE : REPLY TO LOK SABHA UNSTARRED QUESTION NO.2918.**

The banks were also required to write off loans of aggregate amount of Rs.6170 crores. All leading nationalised banks had sacrifice heavily in terms of writeoff as can be seen from table given below:-

TABLE
(AMOUNT WRITTEN OFF BY NATIONALISED BANKS)

<u>BANKS</u>	<u>1994-95</u>	<u>1995-96</u>	<u>1996-97</u>
	<u>(AMOUNT IN RS. CRORE)</u>		
1. STATE BANK OF INDIA	363.72	389.69	293.67
2. BANK OF INDIA	260.38	307.08	217.15
3. UCO BANK	165.07	110.98	220.57
4. CENTRAL BANK OF INDIA	144.12	138.44	156.83
5. PUNJAB NATIONAL BANK	220.77	53.14	150.34
6. INDIAN OVERSEAS BANK	5.94	75.01	375.73
7. BANK OF SAURASHTRA	18.95	4.02	2.38
8. CANARA BANK	200.00	169.49	18.20

VI-A

PREAMBLE

The preamble of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, reads as under :-

"An Act to provide for establishment of Tribunal for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto."

The preamble reflects the objects of the Act and it is manifestly clear that there is a need to have expeditious adjudication and recovery of debts due to banks and financial institutions from the defaulting clients.

Preamble serves the purpose of portraying the interests of the framers and the mischief to be remedied. It is a good Indicator to find out the meaning of the statute and it gives a key to open the understanding thereof. In case there is any ambiguity in the Act, it is to be resorted by reference to the preamble **24

According to a study made by Indian Banks Association **25, out of the total of Rs.1,55,000 crore advances of public sector banks around 22 per cent are totally not recoverable. The resulting annual loss in terms of interest alone is Rs.5000 crores, assuming an average rate of 15 per cent on Rs.34,100 crores.

The underlying object of the Act is to protect and promote the interest of banks and financial institutions who are always in disadvantageous position when pitted against the vast army of willful defaulting borrowers **26

The Supreme Court has laid down a golden rule for interpretation of statute **27, which stipulates that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the law makers. The attempt of the Court should be to reconcile the relevant provisions and to adopt rule of liberal construction so as to give meaning to all the parts of statute. **28

Thus the endeavour on part of the courts/ Tribunal while interpreting the statute should be to achieve the goal of expeditious recovery of bank's dues which ultimately is public money.

**24 MARTIN'S LAW LEXICON PAGE 787.

**25 EDITORIAL, THE BANKER, DECEMBER 1993.

**26 K. K. SARKAR, ON THE ACT, PAGE 2.

**27 SHIVNARAYAN KABRA V/s. STATE OF KARNATAKA, AIR 1967, SC 986.

**28 SIRAJUL KHAN V/s. SUNNI WAKF BOARD, AIR 1959 SC 156.

VII

SALIENT FEATURES OF THE ACT.

The Act is a turning point in the history of banking legislation conferring special and privileged status to the banks and financial institutions. The salient features of the Act are :

- i) It aims at expeditious recovery of debts due to banks and financial institutions.
- ii) It applies only to Central level financial institutions, State level financial institutions have been excluded.
- iii) It excludes the jurisdiction of ordinary Civil Courts in deciding the cases of banks which fall within the jurisdiction of tribunal.
- iv) It provides for Appellate Forum, such appeal is to be filed within 45 days from date of the order by tribunal.
- v) An appeal to High Court and Supreme Court can be preferred against the order of Appellate Tribunal.
- vi) Provision for compulsory deposit of 75% of adjudicated debt due as a precondition for filing appeal.
- vii) The tribunal has a statutory duty to initiate process within one month from the date of receipt of application.
- viii) Provision is made for transfer of pending recovery cases before the Tribunal.
- ix) Power to arrest and detain in prison as a mode of recovery
- x) Representation can be made by presenting officer who is authorised official of bank or financial institution.

The Act came in force on 24/6/1993 and does not apply to State of Jammu and Kashmir.

VIII

INSTITUTIONS COVERED BY THE ACT

The Act covers the dues of Banks and Financial Institutions. The term 'bank' means a banking company – State Bank of India and its subsidiaries and the Regional Rural Bank.

The term financial institution means – IDBI, IFCI, ICICI, UTI and such other institutions as the Government may specify. **29

All the institutions mentioned above are body corporates in which the Government has substantial/total holding and stake.

The Central Government has further notified the following institutions as public financial institutions.

- i) The Industrial Reconstruction Bank of India Ltd.
- ii) General Insurance Corporation of India
- iii) National Insurance Corporation of India
- iv) New India Assurance Co. Ltd.
- v) Oriental Fire and General Insurance Co. Ltd.
- vi) United Fire and General Insurance Co. Ltd.
- vii) The Small Industries Development Bank of India
- viii) The Tourism Finance Corporation of India Ltd.
- ix) The Risk Capital and Technology Finance Corp. of India Ltd.
- x) The Technology Development and Infrastructure Corporation of India Ltd.
- xi) National Housing Bank
- xii) Power Finance Corporation Ltd.
- xiii) Rural Electrification Corporation Ltd.

****29** SECTION 2(D) AND 2(1) OF THE ACT, READ WITH SECTION 4 A OF THE COMPANIES ACT.

The purpose of bringing Insurance companies within the ambit of the Act is to provide speedy remedy to them in respect of the claims settled by them **30. Recently private sector banks like Indus Ind. Bank Ltd., UTI Bank Ltd. etc. have been established and such banks are also covered under the Act.

IX

“DEBT” WHICH CAN BE RECOVERED UNDER THE ACT.

The Act is enacted for the objective of recovery of Debts due to Banks and Financial Institutions. The Act defines 'debt' as any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the banks or financial institutions or the consortium under any law for the time being in force in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court and legally recoverable on the date of the application. **31

"Debt" means a sum of money due from one person to another. **32 The word 'debt' is also applied to a sum of money payment of which has been promised in future. **33

As far as agricultural and other loans are concerned, the powers have been vested in the Govt. officials under Public Moneys Recovery Act. These orders will be covered within the definition of 'debt' if proper inquiry was held and certificate of recovery was not issued in a mechanical manner. **34

**30 COMMENTRY ON RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS BY R.V.S.P. ACHAANTA, PAGE 27.

**31 SECTION 2(G) APPLICATION OF THE ACT.

**32 MORTON;S LAW LEXICON 14TH EDITION.

**33 KESORAM INDUSTRIES V/s. COMMISSIONER OF I.TAX AIR-SC 1966 PAGE 1370.

**34 ANJANAPPA V/s. CENTRAL BANK OF INDIA, 1940(1) BANKING CASES, 416.

The term 'debt' includes interest also. The rates of interest charged by the banking companies are not to be subject to scrutiny by the Courts and the transaction can not be reopened on the ground that rate of interest charged is excessive.**35 The constitutional validity of this provision is upheld **36 by Division Bench of A. P. High Court.

Another interesting aspect of the term debt is the effect of compound interest. At times the amount claimed by the banks/institutions is several times more than the principal amount lent because of compounding. The courts have by and large upheld the position.**37 The recent trend on part of the Courts is that, the Courts should not be generous to the defendant at the cost of public institutions **38

X

ESTABLISHMENT OF TRIBUNALS

In accordance with the provisions of the Act, it is understood that the Government has established 5 Tribunals, the details of such tribunals are as under : **39

	<u>STATES</u>	<u>ADDRESS OF TRIBUNAL</u>
a)	West Bengal	I FLOOR, Local Centre I A Block, Sector 3, Salt Lake Calcutta 91
b)	Delhi	III Floor, Vikrant Tower, Rajendra Place, New Delhi.

**35 SECTION 21A BANKING REGULATIONS ACT.

**36 STATE BANK OF HYDERABAD V/s. A. SAKRU (AIR 1994 AP 170)

**37 UNION BANK OF INDIA V/s. NARENDRA PLASTICS (AIR 1991, GUJ.67.)

**38 KARNATAKA STATE FINANCIAL CORPORATION LTD. V/s. ASSOCIATED ENGINEERS(1995 BANKING CASES, 55 KAR.)

**39 GOVT. NATIFICATION FOR CONSTITUTING TRIBUNALS.

- | | | |
|----|--|---|
| c) | Rajasthan, Himachal Pradesh & Haryana, Union Territory of Chandigarh | Nehru Place Complex, Tank Road, Kao Chandigarh |
| d) | Andhra Pradesh Karnataka | Krishi Bhavan Nrupathung Road, Bangalore 560 002. |
| e) | Gujarat, Dadra Nagar Haveli, Daman | Diamond Jubilee Hall Gujarat Vidyapith Ahmedabad 380 013. |

During the course of research studies, I attended Tribunals at Delhi, Bangalore and Ahmedabad. It is observed that the banks have lot of expectations from such tribunals. However, in most cases the requisite infrastructure is not available. Once such teething problems can be overcome, the real impact of their functioning can be understood.

The functioning of Tribunals at Delhi received a serious drawback because the Delhi High Court has granted a stay against their functioning and it ceases to function as on 31/3/95.**40

The Tribunal at Ahmedabad was initially presided over by Shri A. K. Trivedi, a judicial officer with vast and versatile experience. Shri A. K. Trivedi is promoted as High Court judge and the vacancy is yet to be filled up. The total number of cases filed before all the tribunals in India as on 31/12/98 comes to 16107.**40A

**40 DELHI HIGH COURT BAR ASSOCIATION V/s. UNION OF INDIA.

**40A JOURNAL OF BANKING STUDIES, FEBRUARY 1999 PAGE 11.

The Tribunals have so far actually disposed of 2271 cases involving an amount of Rs.246.19 Crores.

XI

JURISDICTION, POWER AND AUTHORITY OF TRIBUNALS

From the appointed day, the tribunals have been vested with jurisdiction to entertain and decide applications from the banks and financial institutions.

The tribunals once they commence their functioning, the other courts or authority shall not be entitled to exercise any jurisdiction, power or authority. Meaning thereby, the jurisdiction of tribunals is intended to be exclusive.

The jurisdiction of High Court and Supreme Court under Article 227 of Constitution however remains intact.**41

The jurisdiction can be territorial and pecuniary. The existing provisions governing the jurisdiction under Civil Procedure Code **42 have been by and large adopted in the new Act.

The Tribunals have been vested with vast and wide powers not only to adjudicate the claim but also to see that the adjudication does not culminate into a mere paper decree but actually results into speedy recovery of the dues.

XII

PROCEDURE OF TRIBUNALS

The entire process of the tribunal starts with an application in the prescribed format to be made by the concerned bank/financial institution.

**41 SECTION 18 OF THE ACT.

**42 SECTION 15 TO 20 OF CIVIL PROCEDURE.

Such application should be filed within the period of limitation **43.

The tribunal shall issue a summons on receipt of the application and the defendant is required to appear within 30 days.**44

The Tribunal after giving fair opportunity to both the sides may pass such orders as deemed fit to meet the ends of justice and copy of such order is to be sent to both the parties. The tribunals also have the powers to grant injunctions.

The proceedings before the Tribunal culminate into an order on basis of which the presiding officer shall issue a certificate directing the Recovery Officer to recover the amount specified. The most appreciable feature of the Act is the time limit prescribed which stipulates that the application shall be dealt with as expeditiously as possible and Tribunal shall endeavour to dispose of the application finally within Six months from the date of application.

The legislative intent to expedite recovery of the public dues involved is already manifested in the above provisions. If any of the parties is not satisfied with the order, appeal can be preferred within 45 days. The appeal also is to be decided maximum within a period of Six months. The defendant is required to deposit 75% of the amount before filing an appeal, unless the Tribunal waives this condition.**47

The provisions governing appeal under this Act, somewhat resembles with the provisions of Income Tax Act**48 under which an assessee is under an obligation to pay the tax due before filing an appeal.

**43 AS PRESCRIBED UNDER LIMITATION ACT, 1963.

**44 SECTION 19(3) OF THE ACT.

**45 ORDER 39, CIVIL PROCEDURE CODE.

**46 SECTION 19(8) OF THE ACT.

**47 SECTION 21 OF THE ACT.

**48 SECTION 294(4) OF I. T. ACT, 1961.

XIII

TIME LIMIT FOR DISPOSAL OF CASES

Though time limit of Six months is prescribed under the Act for deciding the applications and appeals, the word "endeavour to dispose of", by its implication suggests and envisages that there may be circumstances when the matter may not be disposed of within stipulated time limit. The experience with similar pending cases in such forums, suggests that the possibility of matters getting delayed can not be ruled out in toto.**49 The position of Dist. Consumer Forum-Ahmedabad is given in Table 13-G for sake of comparison.

XIV

PRE-CONDITIONS FOR FILING AN APPEAL

An Appeal, enables the review of the decision of lower forum by a competent forum and the right should be created under statute**50 The Act specifically provides for such appeal but at the same time provides that the banks/financial institution in whose favour the recovery certificate is given need not wait infinitely to recover its money. Hence 3/4th of the amount adjudicated has to be deposited before appeal is preferred.

Issues not raised in the trial can not be raised in appeal.**51

Though in a different context, the Supreme Court has held that expeditious disposal of cases is a constitutional right**52. The Act makes specific provisions for this purpose both at the stage of Trial and Appeal.

**49 CONSUMER PROTECTION ACT, 1993.

**50 COMMISSIONER OF I. TAX V/s. RAGHUVIR SINGH (1980, AIR – SC 257)

**51 LIC OF INDIA V/s. SHAKUNTALA BAI – AIR 1965 AP 68.

**52 AIR 1981 SC 361.

XV

CERTIFICATE OF RECOVERY

The tribunal after giving fair hearing to both the sides, will issue certificate of recovery. This certificate is issued to the Recovery officer by the Tribunal for recovery of debt specified therein. The certificate is mere order of the Tribunal to Recovery officer to recover the sum stated therein and there may or may not be any reference to the properties charged/mortgaged, difficulty may arise when other authorities like Income Tax Deptt., Sales Tax Deptt. Also claim their dues and their charge under the statute is given precedence.

The error on part of the Tribunal in issuing the Certificate may invite further problems. One view is that if the Tribunal went wrong, it went outside the jurisdiction conferred upon it and decision would be void**53. It appears the framers of the Act were conscious of this problem and hence it is specifically provided that it shall not be open to the defendant to dispute before the Recovery officer the correctness of the amount specified in the certificate. The Recovery officer has no power to entertain any objections on the validity of the Certificate.**54. Under a similar provision, an executing court is not to go behind the validity of the decree passed by a Civil Court because such powers have been vested only in appellate courts.**55

The provisions of this Act do not take away the rights available to a party under other substantive laws. Thus, the right of the mortgager to redeem the property under Section 60 of Transfer of Property Act remains and an opportunity will have to be given to the mortgagor to redeem property.**56

**53 PER LORD DENNING IN TAYLOR V/s. NATIONAL ASSISTANCE BOARD
1957(1) All ER 183.

**54 SECTION 26(1) OF THE ACT.

**55 ORDER 21 RULE 28 CIVIL PROCEDURE.

**56 NEW KENILWORTH HOTELS LTD. V/s. ASHOK IND. LTD.

The Presiding officer of the Tribunal is vested with the power to grant time for payment of amount and thereupon the Recovery officer will stay the proceedings, upon receiving information to that effect.**57

XVI

MODES OF RECOVERY

The Recovery Officer, on receipt of copy of certificate, is to proceed for recovery of specified debt in one or more of the following modes.**58

- a) Attachment and sale of movable or immovable property of defendant.
- b) Arrest of defendant and his detention in prison
- c) Appointment of Receiver for the management of movable or immovable properties of defendant.
- d) Recovery of amount due from any person to the defendant.
- e) Recovery of money belonging to the defendant from custody of any Court.

All the modes specified above are available under existing provisions of Civil Procedure Code. For actual recovery of dues, the recovery officer may have to face disputes and technical objections at each stage.

XVII

EXCLUSIVE JURISDICTION.

In respect of the matters specified under the Act, ie. All the cases where amount claimed is more than Rs.10lacs, the Act provides in clear terms **59 that the jurisdiction of the Civil Courts is excluded. The tribunals however, while deciding the matter, will not insist for too rigid a compliance of procedural aspects. Rules of Procedure are the handmaid of justice and not the mistress.**60

**58 SECTION 25 AND 28 OF THE ACT.

**59 SECTION 18 OF THE ACT.

**60 A R ANTULAY V/s. R. S. NAYAK (AIR 1988 SC 1531)

If any order of the tribunal suffers from basic infirmity should the aggrieved party prefer an appeal or apply under writ jurisdiction? To prefer an appeal he has to deposit substantial amount. Such alternative remedy is not a bar to file writ petition when the action of authority is illegal.**61

XVIII

TRANSFER OF EXISTING CASES TO TRIBUNALS

The Act confers on the Tribunals exclusive jurisdiction to decide the recovery cases of banks/financial institution. If the cases at present pending with the courts are allowed to continue with them the purpose of the Act will be frustrated. The Act has therefore, provided that every suit or proceeding pending before any court immediately before date of establishment of tribunal shall stand transferred to the tribunal as if the Cause of Action had arisen before that date. However, if any appeal is pending before any Court, the same is not transferred.**62

The Act also provides that the Courts before which the proceedings are pending shall forward the records of such suit to the Tribunal upon receipt of the records. The tribunal will decide the matter from the stage where the Court was earlier dealing with it, or de novo start it.

Other proceedings like execution proceedings also shall stand transferred to the tribunal.

In the High Courts having Original Civil jurisdiction i.e. Bombay, Madras, Calcutta and Delhi, matters may be pending for other aspects like Company Law provisions and difficulty may arise in transfer of cases.**63

**61 G. K. IYENGAR V/s. STATE OF KARNATAKA ICR 199 KAR.4070.

**62 SECTION 31(1) OF THE ACT.

**63 R.N.S.A. ACHANTA COMMENTRY ON THE ACT, PAGE 125.



XIX

ACTUAL FUNCTIONING OF TRIBUNALS

The Act was passed in 1993 and it was expected that the Tribunals will commence their functioning and recovery proceedings expeditiously, so far the required momentum is not there. The tribunals have yet to overcome the teething problems. The infrastructure and staff is not available to the desired extent. In some cases the tribunals have started functioning in premises provided by banks. In the Tribunals at Ahmedabad, the Recovery officer is not appointed.

The overall position of the functioning of tribunals is given in the following tables given at the end of this chapter:-

XX

STAY GRANTED BY THE DELHI HIGH COURT AND

SUBSEQUENT SUPREME COURT ORDER.

The Delhi High Court **64 held that since the tribunals were being set up to usurp the jurisdiction of the Civil Courts, which were directly under the High Courts, it was in violation of the independence of judiciary and hence the Act was bad in law. It was also contended before the High Court that the Act does not allow counter claim to be filed by the party**65 and hence biased. Work at tribunals had come to a standstill following the High Court Order granting ad interim stay.**66

The Supreme Court has in special leave petition filed by Union of India, stayed the order of Delhi High Court. The Govt. submitted that there was a basic error in the High Court order since it had mentioned that setting up of tribunal was against the principle of independence of judiciary. Such stand will lead to the winding up of similar tribunals, say labour courts, who were set up to exercise some powers earlier available with Civil Courts.**67

**64 DELHI HIGH COURT BAR ASSOCIATION V/s. UNION OF INDIA.

**65 ORDER 8 RULE 6 CPC.

**66 BUSINESS LINE.

**67 PER IN CHANDRASHEKARAN, ADDITIONAL SOLICITOR GENERAL.

ANNEXURE – I
POSITION OF MATTERS IN BANK RECOVERY
TRIBUNAL AT AHMEDABAD

VISITED ON	:	26 TH MARCH 1996.
PRESIDING OFFICER	:	Hon'ble Shri Trivedi
Appointment date	:	21 st December 1994
Total Cases	:	1100 – No.of cases transferred from Civil Courts – 1000
New Cases filed in 1995	:	167
Total amount involved	:	Rs.750 crores(approx.)
Area of Jurisdiction	:	Gujarat, Diu, Daman, Dadra and Nagar Haveli
Cases decided	:	35
Constraints	:	adequate staff not available The Registrar Shri Mahendra Kumar assumed charge in March 1996.

Recovery officer is yet to be appinted.

The cases submitted by the Banks were sometimes not as per the requirements of the Tribunals.

Suggestions by the	:	The Law officers of the Bank should be
Presiding officer	:	specially trained for Tribunal cases.

Adequate machinery should be made available on top priority basis.

TABLE

- 13-A All India position of cases pending before Debt Recovery Tribunals
- 13-B Statement showing position of filing of cases in Debt Recovery Tribunal – Ahmedabad.
- 13-C Statement showing position of pending cases with Debt Recovery Tribunal – Ahmedabad including Cases transferred.
- 13-D Statement showing Districtwise cases and amount involved in cases before Debt Recovery Tribunal – Ahmedabad.
- 13-E Statement showing amountwise classification of matters decided by DRT – Ahmedabad.
- 13-F Statement showing manner in which cases were disposed off by DRT- Ahmedabad between 1/6/96 to 31/3/97.
- 13-G Table showing disposal of cases by District Consumer Forum-Ahmedabad (To compare it with DRT disposal because under both the Acts the time for disposal is 6 months.)
- 13-H Table showing yearwise disposal of cases and amount involved b DRT- Ahmedabad during the year 1995, 1996 and 1997.
- 13-I Table showing yearwise (date of institution) cases disposed off by DRT- Ahmedabad.

The aforesaid tables reveal that :-

- (a) The tribunals are facing challenging task not only in terms of deciding the matters but effecting actual recovery.
- (b) The disposal of cases by tribunal in Gujarat State has hearily suferred because of not filling the vacancy since last more than one year.
- (c) The mechanism for recovery seems to be inadequate.
- (d) The tribunals should exercise their powers for injuncion, attachment and other interlocutory orders more effectively.
- (e) In deciding the old cases transferred, priority should be given to the most pending cases.

653-A

TABLE 13-A

SHOWING ALL INDIA POSITION OF DRT

CASES FILED BY VARIOUS BANKS/

FINANCIAL INSTITUTIONS

(AS ON 31/3/1998)

Total number of cases filed (including transferred cases)	16107
Total number of cases decided	2271
Total amount involved in decided cases	1167.96 Crores
Total amount received	Rs.246.19 Crores

SOURCE : THE JOURNAL OF BANKING STUDIES FEB'1999, PAGE-11.

TABLE13 - B**STATEMENT SHOWING YEARWISE****FILING OF CASES IN DRT FROM****1995 UPTO 1998**

<u>YEAR</u>	<u>NO. OF NEW</u>	<u>SUIT CLAIMED</u>
	<u>MATTERS</u>	<u>(RS.)</u>
1995	166	1,24,51,23,175=60
1996	242	2,22,61,20,939=91
1997	288	3,98,65,86,530=86
1998	360	

TOTAL : 697		7,45,75,30,646=37

TABLE 13 - C

TABLE SHOWING COMPOSITION OF THE

MATTERS PENDING WITH DRT, AHMEDBAD

GUJARAT STATE

<u>PARTICULARS</u>	<u>NO.OF MATTER</u>	<u>SUIT CLAIMED</u>
		<u>AMT.RS.</u>
MATTERS TRANSFERRED FROM VARIOUS COURTS UNDER SECTION 31 OF RECOVERY OF DEBTS DUE TO BANK AND FINANCIAL IN. ACT.	1044	60,45,58,82,551=74
NEW MATTERS FILED		
1995 – 166		
1996 – 242		
1997 – 288		
1998 – 360		
	1056	7,45,75,30,646=37
	<hr/>	
TOTAL	2100	

653-D

TABLE 13 - D
DEBTS RECOVERY TRIBUNAL, AHMEDABAD
TRANSFERRED AND NEW MATTERS OF DRT

SR.NO. NO.	NAME OF DISTRICT.	CODE.	TOTAL SUIT	TOTAL EXECUTION	TOTAL MATTERS	TOTAL SUIT CLAIM AMT.
1.	AHMEDABAD CITY CIVIL COURT	(C.C.AHD)	351	53	404	4,12,72,31,472=93
2.	AHMEDABAD(RURAL) MIRAZAPUR	(AHD@.)	37	11	48	54,25,37,77,543=39
3.	AMRELI	(AML)	1	1	2	71,83,470=00
4.	BARODA	(BRC)	110	NIL	110	62,94,73,069=75
5.	BHAVNAGAR	(BVP)	23	3	26	21,48,74,785=97
6.	BHARUCH.	(BH)	37	10	47	18,70,97,024=65
7.	DIV,DAMAN & DADRA NAGAR HAVELI	(DDN)	5	NIL	5	1,41,87,777=06
8.	HIGH COURT OF GUJARAT.	(HGC)	19	NIL	19	37,05,85,299=60
9.	JAMBAGAR	(JM)	18	NIL	18	13,58,46,283=47
10.	JUNAGADH	(JND)	25	3	28	16,15,39,083=86
11.	KHEDA AT NADIAD	(ND)	33	NIL	33	20,48,71,323=64
12.	KACHCHH AT BHUJ	(BHUJ)	19	1	20	12,53,36,546=82
13.	MEHSANA	(MHS)	36	7	43	40,96,35,515=69
14.	NAVSARI AT BULSAR	(NVS)	47	25	72	21,87,80,281=45
15.	PANCHMAHAL AT GODHARA	(GDA)	21	5	26	30,27,12,474=70
16.	PALANPUR(BANASKANTHA)	(BK)	NIL	NIL	NIL	NIL
17.	RAJKOT	(RJT)	47	13	60	2,72,02,488=49
18.	SURAT	(ST)	100	1	101	33,73,21,190=53
19.	SURENDRANAGAR	(SUNR)	15	7	22	12,28,92,214=67
20.	SABARKANTHA AT HIMATNGR	(HMT)	5	NIL	5	20,03,11,930=20
21.	DRT NEW MATTERS.1995	(DRT)	167	NIL	167	1,24,51,23,175=60
22.	DRT NEW MATTERS, 1996	(DRT)	242	NIL	242	2,22,61,20,939=91
			1358	140	1498	65,52,21,03,892=76

TABLE 13 - E

TABLE SHOWING AMOUNTWISE
POSITION OF CASES DECIDED BY
DEBTS RECOVERY TRIBUNAL
GUJARAT STATE AHMEDABAD
BETWEEN 1995 UPTO 1998

<u>AMOUNT</u>	<u>NO. OF SUITS</u>
<u>(RS. IN LACS)</u>	

10 – 20	187
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20 – 30	42
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30 – 40	36
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40 – 50	20
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50 – 60	9
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60 – 70	15
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70 – 80	9
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80 – 90	2
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90 – 100	3
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100 – 150	12
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150	6
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TOTAL :	341
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TABLE13 - F

STATEMENT SHOWING POSITION OF
DECIDED MATTERS BY DRT, BETWEEN
1/6/96 TO 31/3/97

<u>MODE OF</u>	<u>NO. OF MATTER</u>	<u>AMT.</u>
<u>DISPOSAL</u>	<u>DISPOSAL</u>	<u>(RS.)</u>
WITHDRAWN	19	3,97,50,556=45
COMPROMISE	4	2,11,61,523=89
DISPOSAL ON MERITS	61	22,08,20,266=69
TOTAL :		32,86,00,608=21

TABLE 13 - G

POSITION OF PENDING CASES IN
AHMEDABAD CITY CONSUMER FORUM

YEAR	FILING	DISPOSAL	PERCENTAGE
1989	68	-	NA
1990	342	72	21.05
1991	729	469	64.33
1992	1371	789	57.55
1993	1830	999	54.59
1994	2095	1009	48.16
1995	908	572	63.00
1996	973	1729	177.70
1997	1666	1727	103.66
1998	2035	1281	62.95
	-----	-----	
TOTAL	12017	8647	

SOURCE – SANDESH – AHMEDABAD 16/12/98

653-H

TABLE13 - H

STATEMENT SHOWING YEARWISE

DISPOSAL OF CASES BY DRT,

AHMEDABAD SINCE ITS FORMATION

IN THE YEAR 1995

<u>YEAR</u>	<u>NO. OF NEW</u>	<u>SUIT CLAIMED</u>
	<u>MATTERS</u>	<u>(RS.)</u>
JULY'95-DEC'95	30	7,76,38,208=95
JAN'96-DEC'96	140	41,63,03,648=89
JAN'97-DEC'97	133	50,36,95,005=82
TOTAL : 303		99,76,36,863=36

TABLE 13 - I

TABLE SHOWING YEARWISE
PENDING CASES DECIDED BY
DEBTS RECOVERY TRIBUNAL
GUJARAT STATE AHMEDABAD

<u>YEAR</u>	<u>NO.OF CASES</u>
1989 & PRIOR TO 1989	77
1990	17
1991	19
1992	27
1993	25
1994	55
1995	92
1996	19
1997	9
1998	1
<hr/>	
TOTAL :	341