
(1985) 12 DEL CK 0022
In the Delhi High Court

Kanta Mehta

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-12-1985

Acts Referred:

Banking Regulation (Amendment) Act, 1956 — Section 12
Banking Regulation (Amendment) Act, 1959 — Section 17
Banking Regulation (Amendment) Act, 1968 — Section 10A, 10A(5)
Banking Regulation (Amendment) Act, 1984 — Section 18, 18, 21, 22(3), 227
Banking Regulation Act, 1949 — Section 5, 8
Companies (Acceptance of Deposits) (Amendment) Rules, 1978 — Rule 3, 3A, 4
Companies (Acceptance of Deposits) Rules, 1975 — Rule 2, 3
Companies Act, 1956 — Section 58A
Constitution of India, 1950 — Article 19(1), 246

Citation : (1987) 62 CompCas 769

Hon'ble Judges : Rajinder Sachar, C.J.;Leila Seth, J

Bench : Division Bench

Judgement

Rajinder Sachar, C.J.—This and the connected writ petitions challenge the constitutional validity of Chapter II-C read with section 58B (5A) of the Reserve Bank of India Act, 1934, introduced by the Banking Laws (Amendment) Act, 1983 (Act 1 of 1984) (to be called "the impugned legislation"). They would be disposed of by this common judgment. The main averments of facts are being taken from this petition for illustrative purpose, otherwise the arguments on questions of law are all common. The petitioner's contention is that the provisions of the said Chapter, particularly section 45S read with section 58B (5A) are violative of the petitioner's fundamental rights guaranteed under articles 19 and 14 of the Constitution of India. The petitioner also challenges the legislative competence of Parliament to enact the said impugned provisions.

2. The newly incorporated section 45S of the Reserve Bank of India Act provides that no individual or firm or an unincorporated association of individuals shall, at any time, have deposits from more than the number of depositors specified against each in the table mentioned therein, which is as follows :

(i) Individual Not more than twenty-five depositors excluding depositors who are relatives of the individual. (ii) Firm Not more than twenty-five depositors per partner and not more than two hundred and fifty depositors in all, excluding, in either case, depositors who are relatives of any of the partners. (iii) Unincorporated Not more than twenty-five depositors per association of individual and not more than two hundred individuals. and fifty depositors in all, excluding, in either case, depositors who are relatives of any of the individuals Constituting the association.

3. Section 45S(2) further provides that where at the commencement of the Act, the deposits held by any such person are not in accordance with sub-section (1), he shall, before the expiry of a period of two years from the date of such commencement, repay such of the deposits as are necessary for bringing the number of depositors within the relative limits specified in that sub- section. Sub-section (5A) of section 58B has also been incorporated by the Amendment Act I of 1984 and provides that if any person contravenes any provision of section 45S, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more, or with both.

4. Section 58B of the Reserve Bank of India Act bars any court from taking cognizance of any offence punishable under the Act except upon a complaint made by an officer of the bank, generally or specially authorised in this behalf by the bank. The provisions of the Amendment Act (Act 1 of 1984) were brought into force on February 15, 1984.

5. The petitioner claim to be in the business as a proprietor of a concern since November 16, 1978. Its business consists of accepting of deposits of money from the general public and then loaning it out to various industries and businessmen. The petitioner also claims to advance moneys to the depositors against their deposits for purposes of purchase of household appliances, house building as also for their pressing demands and to meet the needs of the depositors like higher studies of their children or marriages in the family. The rate of interest generally offered to the depositors is stated to be 17%, 18% and 19% per annum for one year, 2 years and 3 years deposits respectively. The rate of interest charged to the borrowers is claimed to be a maximum of 26% per annum. The difference between the rate of interest paid to the depositors and the interest received from the borrowers represents the gross earnings of the petitioner out of which the establishment expenses and maintained

6. The petitioner claim that none of its borrowers is a small farmer or petty trader, and it claims that its borrowers are industrialists and businessmen and boasts of a clean record of not having filed a suit in any court till date to recover any money from her borrowers nor was nay suit ever filed against her by any depositors on the ground that money was not paid back on maturity. The petitioner claims to have a total number of 6,919 persons as depositors and its

total deposits are of Rs.567 lakhs as on December 15, 1984.

7. Though it is not really necessary to give the facts in each of the cases, yet as stress was laid by some of the counsel for the petitioners income of the cases to emphasise their legal contention, they may as well be briefly notice.

8. Mr. Shanti Bhushan, learned counsel who appeared for the petitioner (in C.W.No. 1183 of 1985), emphasised that the petitioner firm had two partners and was in the business since 1890 and it continued in the business till 1939 and though it had discontinued for some time, it started again in 1958 in Surat and then it shifted to Bombay in 1961. AS on February 14, 1984, it had about 2,50,000 depositors and the total deposits amounted to Rs.63 crores. The longest deposit terms for which deposits have been accepted are stated to be 65 months. The petitioner offers varying rates of interest starting with 8% on fixed deposits for a period of 3 months and 15% for deposits for a period of 5 years. It also runs a cumulative deposits scheme with the result that at the end of 65 months, the amount deposited becomes double. The scheme is similar to the one prevalent in various banks. As on January 31, 1985, the number of borrowers was about 5,500. The repayments are in Installments over a period which may extend to over 10 years. It is stated very candidly that at any given point of time, the petitioner can meet its liability to repay the depositors and pay the salaries only partly out of the amounts received by way of repayments, while the other part has to be met out of fresh deposits received. The rate of interest charged to the borrowers is stated to be a maximum of 18% on secured loans and 21% on unsecured loans as permissible under the Money Lenders Act enforced in different States.

9. Mr. Proti, learned counsel who appeared for the petitioners (in C.W.No.2473 of 1985) which is a combined petition of 28 petitioners says that the petitioners are in the business from various dates stretching backwards from 1940's, 1950's and 1970's. The petitioners therein are registered under the Kerala Money Lenders Act. As on February 16, 1984, the number of deposits with various petitioners ranged from as little as 31 to a maximum of 3,983 ; however, most of the petitioners have depositors running into hundreds only. The petitioners claim to take deposits and advance money against gold ornaments which are kept as security.

10. Mr. Venugopal, learned counsel for the petitioner (in C.W.No.1131 of 1985), does not claim that Parliament is not competent to place reasonable restriction on the rights of the petitioners to carry on their present business.

11. Actually, to be counsel and the petitioners, they accept that regulation may not only be permissible, but even desirable. But what they forcibly object to is that the restrictions placed are totally disproportionate to what is necessary in the interests of the general public and, in fact, though they are called restrictions, they amount to prohibition of the business, which is being carried on and this is clearly, Therefore, a violation of the fundamental rights of the petitioner.

12. This argument, apparently springs from the limitation, placed in section 45S(2), with regard to the maximum number of permissible depositors, ranging between 25 per individual and 250 as the outer limit ; as also, the further restriction, that the number has to be brought down, from the existing number of depositors, within a period of 2 years as provided by section 45S(2) of the Reserve Bank of India Act, failing which the penal provisions of section 58B (5A) of the Reserve Bank of India Act would be automatically attracted, thus virtually ensuring that the petitioner will have to close down his business. It is pointed out by Mr. Venugopal that during the period February, 1984, to February, 1986, deposits to the tune of Rs.4.30 crores will be maturing and will have to be repaid, while the amount recoverable by the petitioner from the borrowers during the said period is about Rs.3.60 crores. In view of the fact that the petitioner's investments are on long-term basis, the restriction to bring down the number of depositors to 25 is an impossible requirement, and the provision is not saved by clause (6) of article 19 of the constitution. The petitioner justifies its activity as meeting the pressing demands of a large sector of the economy which cannot be served by commercial banking operators. It maintained that the estimated amount handled by private financial companies like the petitioner, would be to the tune of Rs.45,000 crores per year and the number of individual citizens engaged in this profession are stated to be about 30,000. It is claimed that the monies so deposited by the general public are invested in various productive activities and the employees engaged in this profession would be to the tune of 15 lakhs and that the annual salary would be about Rs.270 crores. (I may mention here that in the petition the figure is given as Rs.27 crores but during the arguments, counsel for the petitioners, Mr.Venugopal and Mr.Shanti Bhushan, stated that this was by inadvertence and the correct figure was Rs.270 crores). Unreasonableness of restriction is pointed out by urging that no distinction is made between a person who has a large number of depositors, like the petitioner, who has over 6,000 depositors and another who may have only 26 depositors, but both of them are required to bring down the number of depositors to 25 within the rigid period of two years. The requirement to bring down the number of depositors to 25 is stated to be impossible to comply with, as according to the petitioner, even if the borrowers repay the amounts borrowed by them in time there will be a shortage of over Rs.100 lakhs which will be impossible for the petitioner to fill up unless she borrows money again by accepting fresh deposits

13. The petitioner claims to have 21 branches employing about 110 persons and has an overhead expenditure of about Rs.35 lakhs. Working the average deposit at Rs.5,000 it is stated that Rs.1,25,000 (as only 25 depositors can be accepted) is not sufficient to carry on the business and, Therefore, the requirement of having a maximum of 25 depositors would inevitably stifle the normal working of the traditional alternative credit system in the country. Representations are claimed to have been made to the Reserve Bank of India and the Government of India not to apply the law but to no effect and that is why the present writ

petition has been filed.

14. It cannot be gainsaid the impugned legislation does place restrictions on the right of the petitioner to carry on her business in the manner she was doing before the amended provisions were brought into force. The question that arises, however, is a whether the restrictions are reasonable and in the interest of the general public and whether they can stand the scrutiny of the glare of the fundamental rights. We were referred to a large number of authorities by counsel for both sides. But it is not necessary to deal with each of the authorities because it is no longer in dispute that the phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature and beyond what is required in the interests of the public. the word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. (See Chintaman Rao Vs. The State of Madhya Pradesh,). It is correct, that the present business carried on by the petitioners is of a kind, different from the ones like the commercialized vice of prostitution, which was completely prohibited within the localities of municipalities and the court upheld this provision as unexceptional .(See Municipal Committee, Malerkotla Vs. Mohd. Mushtaq, ; nor is it in the nature of gambling which also cannot claim protection under article 19(1) of the Constitution (See R.M.D. Chamarbaugwalla Vs. The Union of India (UOI),), nor is the present business of the petitioners to be equated with that of the trade of intoxicants and liquor or trading in adulterated food articles, because neither of those activities, conferred any such fundamental right (See State of Uttar Pradesh Vs. Kartar Singh, , and Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others,). But from that, it does not follow, that simply because a person is carrying on a lawful business, any restriction placed, is per se, to be considered unreasonable, only on the ground that, as in the view of the person challenging the the provision, the standards are too high. Because even when the business is genuine, and we proceed on that assumption in the present case, it must be remembered that in determining that question, the court, we conceive, cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. For the person who has this right, any restriction will be irksome and may well be regarded by him as unreasonable. But the question cannot be decided on that basis. (See Mohd. Hanif Quareshi and Others Vs. The State of Bihar,).

15. In judging the reasonableness of the restrictions and also whether the legislation was in the interest of the general public, the court must bear in mind that " The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence...". (See The State of Bihar Vs. Sir Kameshwar Singh,). But though this is the proper approach, I accept, that the ultimate responsibility for determining the validity of law must rest with the court and the court must not shirk that solemn duty cast on it by the Constitution, (See Mohd. Hanif Quareshi and Others Vs. The State of Bihar,). It is important in

this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict...the limit to interference with legislative judgment in such cases can only be dictated by a sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking, but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable. (See *State of Madras Vs. V.G. Row*,).

16. It is in this background that one has to judge whether the impugned legislation has overstepped the permissible limits of reasonableness. Apart from pointing out the various provisions to show the unreasonableness of the impugned provisions, one of the very serious arguments advanced by counsel for the petitioners was that there was a total lack of material to support the necessity for the impugned legislation. The suggestion was made that because of the failure of Sanchaita Finance Firm, resulting in ruination of a large number of depositors as reported in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , there was panic reaction resulting in the impugned legislation. It is seriously suggested that the business of accepting of deposits by persons like the petitioner was running smoothly and serving an economic need and there has never been any serious problem with regard to the safety of funds of the depositors or of any disruption of the money market and, Therefore, the impugned legislation is uncalled for, and is an arbitrary interference with the fundamental rights of the petitioner to carry on her business. Is there any plausibility in the contention of the petitioner that the small depositors need no legislation to protect them, and that all is well in the world of money-mopping institutions like the petitioners ? This question can only be answered by looking into the various legislations, reports and studies, that have, in the past, examined the question and offered their solutions.

17. The development of the legislation relating to the acceptance of public deposits began with banking companies which handled a large volume of public deposits. A special legislation, viz., the Banking Regulation Act, 1949 (to be called "the 1949 Act"), was enacted with the objective, inter alia, of protecting the interests of the depositors. This legislation brought the entire gamut of operation of banks within the regulatory provisions and under the surveillance of the Reserve Bank. Section 5(b) of the 1949 Act defined banking to mean, acceptance, for the purpose of lending or investment, of deposits of money from the public. Section 8 prohibited the banking companies from directly or indirectly, dealing in the buying or selling or bartering of goods. By an amendment made in 1968, section 10A of the Act provided for a board of directors to include persons

with professional or special knowledge or practical experience in respect of matters amongst others of accountancy, banking, economics, law and finance. Sub-section (5) of section 10A, further empowers the Reserve Bank to vary the composition of the board of directors of the banking company, by removing a director from the membership of the board of directors and appointing a suitable person, in place of the person so removed. Section 12 introduced by an amendment of 1956, further prohibited the carrying on of banking business, unless the condition with regard to the subscribed capital, being half of the authorised capital, and paid-up capital being at least half of the subscribed capital, was fulfilled. Section 17, introduced by the 199 amendment, required every banking company to create a reserve fund and also to transfer to the reserve fund a sum equivalent to not less than 25 per cent. of the profit every year. Section 18, introduced in 1959, required every banking company to maintain a cash reserve, of at least three per cent. of the total of its time and demand liabilities in India. This provision was made still more stringent by a further amendment made in section 18 by the 1984 amendment. Section 21 also empowered the Reserve Bank to determine the policy. in relation to advances, to be followed by banking companies generally or by any banking company in particular. Section 22(3) also required the Reserve Bank, before granting any license, that it shall, amongst others, be satisfied that the company is or will be in a position to pay its present or future depositors in full, as their claims accrue. Section 24 further requires a banking company to maintain in cash, gold or unencumbered securities, valued at a price not exceeding the current market price, an amount which shall not, at the close of the business on any day, be less than 20 per cent. of the total of its time and demand liabilities in India. Section 227 further requires every banking company to submit before the close of the month of the Reserve Bank, a return in the prescribed form and section 30 requires the previous approval of the Reserve Bank for appointing or removing any auditor of the bank. This will show the great pains that the Legislature was taking to save the deposits, made by the people in general, by providing for supervision and control by the Reserve Bank and also requiring reasonable amount of reserve funds to be maintained. However, no single legislation can possibly anticipate the various problems which arise or the various modes which may be resorted to by persons to avoid the rigours of law. After some time, it was noticed that non-banking companies which were not covered by the Banking Regulation Act commenced accepting public deposits in a big way. As there was no regulation qua these companies, several unhealthy features and malpractices came to surface in the sixties when deposits in the said companies shot up. Such unfettered growth of deposits outside the banking system, both financial and non-financial, mainly depending on deposits from public, naturally caused concern and the need was felt that it was desirable in the interests of depositors that these institutions should not have an unlimited and unrestricted access to public funds. Thus, to meet the situation and to invest the Reserve Bank as custodian of monetary and credit system and to regulate the deposit acceptance activities of such institutions, Chapter III-B was inserted in the Reserve Bank of India Act by

the Banking Laws (Miscellaneous Provisions) Act, 1965. Powers were conferred on the Reserve Bank of India to issue suitable directions to regulate and monitor the deposit acceptance activities of these companies and corporate bodies.

18. Section 45-I(c) defined financial institutions to mean any non-banking institution which carries on its business, namely, the financing, whether by way of making loans or advances or otherwise, of any activity other than its own. The non-banking institution was further defined by sub-clause (e) to mean a company, corporation or a co-operative society. Power was given by section 45J to regulate or prohibit the issue of prospectus of advertisement soliciting deposits of money. Section 45K gave power to the Reserve Bank to collect information from the non-banking institutions about the deposits and to give necessary directions. A duty was cast on the non-banking institutions to furnish information, vide section 45M. In pursuance of the power given by sections 45J, 45K and 45L of the Reserve Bank of India Act, the Reserve Bank of India has been issuing various directions. It issued certain directions to non-banking financial and non-banking non-financial companies with effect from 1st January, 1967. In the said direction, non-banking financial companies were directed, amongst others, not to hold deposits in excess of 25 per cent. of its paid-up capital and free reserves, and a further direction was given that every such company shall take such steps so that the deposits received by the company are not in excess of the aforesaid limits. The validity of this direction was challenged, but was upheld in *Mayavaram Financial Corporation Ltd. and Others Vs. Reserve Bank of India and Others*, . Again the Reserve Bank issued the Miscellaneous certain restrictions were placed on non-banking institutions for receiving deposits from the public. The directions also specified a limit beyond which the non-banking institutions could not accept deposits from the public. Again in July, 1977, the Reserve Bank of India issued directions known as the Non-Banking Financial Companies (Reserve Bank) Directions of 1977. Sub-clause (2)(j) defined a loan company to mean a company which is a financial institution carrying on the business of providing finance whether by making loans or advances for any activity other than its own. Clause 2(1) defines non-banking financial company to mean any loan company. Clause 5 of the Directions provided that from July 1, 1977, no loan company shall receive deposits repayable on demand or on notice after a period of less than six months and more than 36 months from the date of receipt of such deposit. Clause 5(3)(B) provided that on and from April 1, 1981, no loan company shall receive or renew any deposit against an unsecured debenture or from a share-holder, if the amount of any such deposit together with the amount of such other deposits of all or any of the kinds referred to in the sub-clause and outstanding in the books of the company as on the date of the acceptance or renewal of such deposits, exceeds 15 per cent. of its net owned funds. The net owned funds have been defined to mean the aggregate paid-up capital and free reserves as appearing in the latest audited balance-sheet of the company as reduced by the amount of accumulated balance of loss, deferred revenue expenditure and other intangible assets, if any, as disclosed in

the said balance-sheet. Information requiring the number of depositors, the total amounts due, and remaining unclaimed or unpaid beyond the dates on which deposits became due are to be included in the report of board of directors. A ceiling on the rate of interest has been placed by clause 10A by forbidding any non-banking financial company from inviting deposits at a rate of interest exceeding 15 per cent. per annum. Copies of balance-sheet and accounts are to be submitted to the Reserve Bank, vide clause 13. The validity of these directions was also challenged but they were repelled in *A.S.P. Aiyar and Another Vs. Reserve Bank of India, Calcutta and Another*, .

19. It is thus clear, that the Reserve Bank, right since 1966, has been following closely the functioning of these non-banking financial institutions which invite deposits and then lend out money either to trade or various industries. Thus, a ceiling or limit for acceptance of deposits, the requirement to maintain a certain liquidity of funds and also not to exceed borrowings beyond a particular percentage of the net owned funds have been provided for in the corporate sector. All these steps are there with a view to safeguard the interest of the depositors, who otherwise would be without any remedy or without any relief, if unfortunately, these companies were to fail. It should, however, be noticed that the definition of non-banking financial company/institution either under Chapter III-B of the Reserve Bank of India Act or the 1977 Directions of Reserve Bank does not cover persons or firms and as such no direction issued under the above provisions would be applicable to persons like the petitioners who are individuals or firms or associations of persons.

20. Even the corporate sector was not free from being blamed for the damage done to the economy and ruination to the small depositors by the activities of some of the companies. The result was that Parliament had to step in by incorporating in 1974 section 58A in the Companies Act of 1956. The object of enacting the said provision as stated in the Notes on Clauses was as under :

" It has been the practice of the companies to take deposits from the public at high rates of interest. Experience had shown that in many cases deposits taken by the companies have not been refunded on the due dates, either the companies have gone in liquidation or funds are depleted to such an extent that the companies are not in a position to refund the deposits, it was accordingly considered necessary to control the activities of the companies when accepting deposits from "the public."

21. Sub-section (1) of section 58A empowers the Central Government, in consultation with the Reserve Bank of India, to prescribe the limits up to which and the manner in which and the conditions subject to which deposits may be accepted or invited by a company either from the public or from its members.

22. Sub-section (8) of section 58A, inserted by the Amendment Act in 1977, empowers the Central Government where it considers it necessary for avoiding any hardship or for any other just or sufficient reason by order to grant extension

of time to a company to comply with or exempt any company from all or any of the provisions of this section either generally or for any specified period subject to such condition as may be specified in an order provided that no order shall be issued in relation to any company or class of companies except after consultation with the Reserve Bank of India. Clause (b) of sub-section (7) of section 58A exempts the applicability of the section to such financial companies as the Central Government may specify in this behalf. In pursuance of this power, the Central Government has issued a notification in 1975 exempting all classes of financial companies as companies to which no provision of section 58A of the Companies Act shall apply. "Financial companies" has been defined in the said notification to mean a non-banking company which is a financial institution within the meaning of section 45-I(c) of the Reserve Bank of India Act. This notification was issued to avoid duplication. It will be noticed that as per the said definition, a financial institution means any non-banking institution which as a part of its business activities makes loans or advances or otherwise in financing any activity other than its own. Thus, loan or finance companies were already subject to the regulation and supervision of the directions of the Reserve Bank issued by it in pursuance of powers under Chapter III-B of the Reserve Bank of India Act, and it would have been superfluous to include these financial institutions within section 58A of the Act.

23. Now, elaborate rules have been issued by the Central Government called the Companies (Acceptance of Deposits) Rules, 1975. Rule 2(cc) defines a financial company to mean a non-banking company which is a financial institution within the meaning of clause (c) of section 45I of the Reserve Bank of India Act. Rule 3(ii) further provides that no company shall accept deposits as exceeds 10 per cent of the aggregate of the paid up share capital and free reserves of the company. Rule 3A, brought in by amendment of 1978, requires every company to invest a sum which shall no be less than 10 % of the amounts of deposits maturing during the year ending on 31st day of March next following in one or more of the methods indicated therein. Clause (ii) of rule 3 further mandates that this amount shall not be utilised for any purpose other than repayment of deposits maturing during the year referred to in the sub-rule. The form and particulars of advertisements which can be issued by companies which intends to invite deposits are also laid down under rule 4. It will be seen that thus there are severe limitations on the amount of deposits that can be received and also the requirement of keeping liquidity of assets which every company which invites deposits and advances money is to observe whether by the constraint of section 58A of the Companies Act or of the various directions like in 1977 issued by the Reserve Bank of India. Thus a conscious effort to give protection to an unwary depositor has been the theme of these provisions. But there was no law laying down any limitation in the manner of accepting deposits, if the very same activity was carried on by an individual, or firm or an association of persons. Hardly a satisfactory situation, as it was found that persons and firms continued unchecked to indulge in their activities, so much so, that their deposits started

becoming disproportionately in excess, as against the assets or capital owned by these firms or individuals. Result was, that small depositors who were vulnerable to the temptation of earning a high rate of interest became victims of these public deposits by individuals and firms. That this means was not imaginary was recognised by the executive and the Legislature when Bill 183 of 1978, the Banking Laws (Amendment) Bill, 1978, was introduced in Parliament. By clause 5 of the said Bill, a new Chapter III-C was sought to be incorporated in the Reserve Bank of India Act. This Chapter is broadly approximate to the impugned legislation in some ways. It may be noted that section 45S, as in the then Bill, provided that no person or individual shall have deposits in excess of 10 depositors for an individual and not more than 40 depositors for a firm or association of individuals. (However, in the present law, the limit is now of 25 depositors per individual and 250 depositors in the case of associations of individuals). This Bill of 1978, however, could not become an Act because before it could be passed, Parliament was dissolved. That this problem could become acute and distressingly painful was highlighted in the case known as State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , which found a bizarre state of affairs existing inasmuch as a token capital of Rs. 7,000 had begotten a deposit of crores of rupees within a span of five years. The Supreme Court in that case was constrained to observe thus (at page 960) :

" There is no question that this vast wealth has been acquired by the firm by generating and circulating black money."

24. Though the Supreme Court had no alternative but to stop further investigation in the state of law then existing, it directed the State Government, Central Government and the Reserve Bank to look into the matter deeply as it considered such a step essential in the interests of countless small depositors who, otherwise, will be ruined by being deprived of their life's savings. The big black money bosses will take any loss within their stride but the small man must receive the protection of the State, which must see to it that the small depositors are paid back their deposits with the agreed interest as quickly as possible. Because the impugned legislation by a coincidence has been brought after the judgment was given, it was sought to be contended by counsel for the petitioners, that the impugned legislation is merely a panic reaction, and that there was nothing to show that the depositors in general were in jeopardy need of economy, had in any way acted to the detriment of depositors or were responsible for distortions in the economy. The criticism thus is that there was no material which could have persuaded the Legislature to impose any restrictions on the number of depositors which should be taken by persons like the petitioners and there is thus impermissible interference with the fundamental right of the petitioners. But this argument completely ignores the historical perspective which shows that right from 1949 onwards, there has been a sustained attempt to control the menace of unrestricted deposits being accepted by various institutions including companies and attempts have been always made to see that while receiving of the deposits may be permitted, it must be only in

such a manner that the protection to the depositors is not in any way weakened. Further, it is not correct that there was no material to show the deleterious impact of unrestricted deposits being collected by the non-corporate sector like the petitioners. As far back as 1971, a detailed report of the Study Group on Non- Banking Financial Intermediaries was available. This study group was constituted by the Banking Commission which started functioning in March, 1969 "to examine the banking system of the country and to make recommendations for improving its structure and to review the role of the various classes of non-banking financial intermediaries to enquire into their structure and methods of operation and recommend measures for their orderly growth." An in-depth study of the various findings of this report will be helpful in coming to the conclusion whether the impugned legislation satisfies the test of reasonableness or not. The study group was, to start with, confronted with one major constraint, namely, the non-availability of adequate data required for a thorough analysis. The group noticed that in terms of the drawal on the pool of community savings, NBFIs are potential competitors to the banking system to the extent to which they compete with the latter for deposits." (Para 3.7). The argument of easier accessibility of NBFIs was held to be of limited significance because it was in large towns and cities where banks are well represented that NBFIs have traditionally operated and also sprouted most recently. It noted really that there was not sufficient awareness of the risk a depositor runs in placing his funds in institutions whose activities are not adequately supervised. The reason NBFIs had succeeded in mobilising deposits was by being able to pay higher rates on them, whereas the commercial banks were required to maintain specific liquidity ratio which tends effectively to limit the earning potential of the funds. It found the risk element so high that in the lending activities of NBFIs, in several cases it jeopardised the safety of deposits placed with them. Malpractices and fraudulent practices were also found by the group. The group took the view that the answer to the flight of deposits from the bank would lie in bringing about a degree of surveillance over both the deposit and lending operations of NBFIs and a regulation of rates and suggested that the growth of NBFIs represents a gap- filling function, inasmuch as they are catering for the purposes which were not met by the organized banking system until recently, thought it recognised that with the increasing interest taken by the banking system in financing the small man, there may well be a shift of a great may be an area of credit, beyond the line representing what the commercial banks would be prepared to finance, and it is to this class of customers that NBFIs would cater. (How these assumptions are out of reality, I will show later). It recognised that as a result of the activities of NBFIs, the efforts of monetary authorities to regulate credit have been thwarted and cited the instance of England.

25. It, however, recognised the need for regulating the acceptance of deposits by NBFIs not only to ensure the safety of depositors funds but also to ensure the implementation of credit policy objectives of providing credit to neglected sectors at reasonable rates and restricting its availability for less essential purposes. But

it also accepted that the regulation in the form of detailed administrative supervision and periodical inspection would pose certain problems in designing the organisation for control because of the very large number of NBFIs scattered all over the country and of the widely varying nature of their operation. That is why it suggested that the administrative problem can partly be solved by passing a law which may stipulate that only corporate bodies can do banking business in the sense of accepting deposits from the public for the purpose of lending or investment and in that case it will become easier to regulate NBFIs under the Banking Regulation Act. It also wanted a specified minimum degree of control by enforcement of the requirement of compulsory licensing, regular reporting and prescription of minimum capital and liquidity ratios which would result in weeding out a number of unsound NBFIs (Para 3.224).

26. The Group also studied what is called the Bangalore type of Finance Corporation, which type is followed by most of the present petitioners. It found that the major source of funds is from deposits from the public. The paid-up capital of these firms is meagre, which in the overwhelming majority of cases are partnership concerns with 10 partners or less. The number of depositors also varies from about 100 in the case of one corporation to 1,000 in another. Most of these deposits (75% or more) are fixed deposits ranging from 30 days to two years or more. The major part of their deposits consists of Rs.5,000 or less. The corporations have been able to attract deposits mainly by offering very high rates of interest. These rates vary from 4 per cent. to 6 per cent. on short-term deposits to 13 per cent. to 14 per cent. and in some cases, even more on fixed deposits of one year or more. The Group found that the corporation also accept benami deposits to suit the convenience of tax evaders. (Para 8.4). A major outlet for their funds is by way of making advances to traders - amount of advances to agriculture is negligible. The Group found that the advances were made on various considerations, some on the basis of personal knowledge, made against hundis or jewellery or property pledged with them. Advances were mostly of short-term duration, normally a period not exceeding 90 days. The interest rate said to be charged by the corporation on advances was 18 per cent. Though the corporation also found that normally it was 24 to 36 per cent. it was recorded as less.

27. One very disquieting feature the Group found was that there was no standard liquidity ratio maintained by these corporations. The operations of these corporations show that they are making advances with the deposits taken from the public and their own funds were meagre. In one case, the partners of the firm had in fact withdrawn more than 90 per cent. of their capital. It found the danger of overtrading inherent in the system. Thus, it was possible to visualise a situation when the interest of the depositors could be seriously jeopardised.

28. The Study Group gave a caution that apart from protecting the interest of the depositors, there is the question of ensuring that advances made by these corporations are not put to undesirable causes. Information was also given to the

Group that these corporations could contribute to the creation and increase in the circulation of unaccounted money and that a portion of the deposits of these corporations may be coming from people who want to dodge taxes. Since, usually partnerships have a capital of one lakh or less, they were exempted from the purview of the Banking Regulation Act, as in 1963, the legislature assumed, that "they are small firms which accept deposits of very small amounts." But, very rapidly, the situation has now changed. Even regulation under the Money-Leaders Act can, at best, ensure that they do not charge more than 18 per cent., the prescribed ceiling under the Act. But this will not ensure the safety of depositors' money. Though the Group then did not find the magnitude of their operations in the whole economy to be very large, yet the Group found that corporations nevertheless had come to occupy a significant place in the financial structure in certain localities and with an expanding operation, the question of safeguarding the interest of depositors has assumed greater importance. It, Therefore, recommended that the Reserve Bank's control be extended to finance corporations and necessary enabling legislation be passed to that effect. It, however, recognised that the administrative task of watching and regulating the operations of a large number of small firms will be difficult. It, Therefore, suggested that if the law permits, only companies may be allowed to do banking business, in the sense of accepting deposits from the public for the purpose of lending or investment and in that case, the Banking Regulation Act would cover the Bangalore type finance corporations. However, if the law did not permit it, any scheme of regulation may have as one of its objects the reduction in the number of finance corporations, besides safeguarding the interest of the depositors (para 8.25). It also suggested that no finance corporation may be allowed to work without a license from the Reserve Bank of India ; that there should be a ratio between the owned funds of the corporation and their deposit liabilities which, it said, could be at the ratio of 1 to 10 or 1 to 15. Periodical inspection of corporations on sample basis may be done by the Reserve Bank of India to safeguard the interest of depositors. It also recommended that the maximum interest rates on deposits may be prescribed. At the end, the Group said it cannot overemphasize that the solution to those problems lies in the commercial banks reframing their policy and procedure in a way so as to satisfy the demand of borrowers and depositors.

29. We then have the report of the Study Group constituted by the Reserve Bank of India in June, 1974, to examine in depth the functioning of the non-banking finance companies and to suggest measures for affording a degree of protection to the interests of the depositors, known as J S Raj Committee Report. It noted that since activities of NBFIs are not controlled by monetary authorities to the same extent as those of the commercial banks, the credit extended by them may not necessarily be in consonance with the national objectives and priorities. The Raj Committee was of the view that if deficiencies or malpractices in the working are to be minimised, it would be necessary to subject the companies to almost the same type of control as under the Banking Regulation Act (para 5.6).

30. The Group also found that the finance corporations operating in Bangalore (like the petitioner) and other places were partnership firms with a capital investment of Rs. 1 lakh and are not covered by the regulations of the Reserve Bank. They accept deposits from the public out of all proportion to their own funds and invest the funds in ventures of the choice of the partners which cover such activities as film production, hotel business, construction besides usual manufacturing and trading activities. It also found that the corporations are tempted to borrow and lock up their funds by investing them in risky assets (advances) and it also came across examples of finance corporations where the business of the corporations came to a standstill with the result that the depositors lost all their moneys. It also found that the partners use the funds of the finance corporations in any manner they deem fit and it suggested that the regulation of their activities by imposing a ceiling on operations and also the manner of utilisation of funds was necessary (para 5.7).

31. It noted that with regard to bringing these types of firms within the ambit of regulatory measures, the Government had also taken a decision to prohibit acceptance of deposits by all unincorporated non-banking institutions and legislative measures to give effect to this purpose are on the anvil and when the necessary legislation is enacted, all unincorporated non-banking institutions will be prohibited from accepting deposits or converting themselves into corporate bodies (para 5.8). That the Government was thus quite exercised over the various schemes which were mopping up the savings of small people, and putting them in jeopardy, is shown by the passing of the Prize Chits and Money Circulating Schemes (Banning) Act, 1978, which was meant to ban the promotion or conduct of prize chits. The validity of this Act was challenged but the Supreme Court rejected the challenge in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , was given on February 2, 1982. The impugned legislation was introduced in 1983 and was passed on January 12, 1984. I cannot, Therefore, accept that the impugned legislation was a mere panic reaction to *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , collapse and that there was no material and no application of mind by any expert before the impugned legislation was passed. Rather the contrary - there was overwhelming and pressing need for an immediate ameliorative type of impugned legislation. Not to have done so would have been to invite certain disaster.

32. I may note that in order to justify the reasonableness and the necessity for allowing these NB Financial Corporation to continue to receive deposits unchecked, the court was sought to be overwhelmed by the enormity of repercussions, by urging that there are over 30,000 individuals or persons engaged in this business and that over 45,000 crores of rupees are in deposits and that about 15 lakhs employees are involved and if the petitioners were asked to limit themselves to the requirement of 25 depositors or 250 as the maximum, it would have disastrous consequences for the economy, considering that the total deposits with the scheduled commercial banks in the country was 72,024

crores as on December 31, 1984. I may say at once that the claim of Rs.45,000 crores in deposit is under a misapprehension. No source is given and it is obviously not possible for the petitioners to say about this from its own knowledge. The documents filed by the petitioners show to the contrary. In one of the representations (at page 67 and 71 of the writ file), the magnitude of the problem is posed, by pointing out that the large and highly developed network of distributive trade, inclusive of nearly 3.3 million retailers alone, handled sizeable business worth Rs.45,000 crores each year. The total investment in the trade is estimated at rupees five thousand crores. Again in a memorandum annexed to the petition of Vidharba District Saraf Association, it is reiterated that it is the retailers which handle business of Rs. 45,000 crores and the the total investment in trade is estimated at five thousand crores and the strict compliance with the provisions of the Bill would require the immediate withdrawal of at least rupees five thousand crores from this sector of the economic community. It is quite clear that the figure of Rs.45,000 crores, is thus the outturn of the various retailers which were funded by institutions like the petitioners and not the deposits as was claimed.

33. Similarly, the counsel's argument that the small and neglected sector of economy, rural or semi-urban, is being serviced also turns out to be non-existent, and is rather contradictory to the petitioner's own stand in the writ petition, where in paragraph 11, it is submitted that none of the borrowers from the petitioners, is a small farmer or a petty trader and that moneys are borrowed by industrialists and businessmen who borrow, because it is advantageous to them and after knowing the full implications and that there is no scope for the petitioners to exploit the weaker sections of society, unlike in the case of a traditional money-lender. Thus, the solicitude of serving the needs of the small man is sorely lacking. As a matter of fact, even the 1971 Study Report had found that NBFIs have traditionally operated only in large towns.

34. That the business of the petitioners is not to give service or loans to small deserving people, even though taking deposits from the small man, becomes amply clear, by referring to the details supplied by the petitioner itself in C.W.P. No. 1183 of 1985, in its affidavit dated November 7, 1985. The list shows that on February 14, 1984, there were about Rs.58 crores in deposit and even by February 15, 1986, they will come down to amounts above Rs. 50 thousand, making a total of about Rs.77 lakhs. It is evident that out of over 2,50,000 depositors claimed by the petitioners, overwhelming numbers of them are small depositors which would justify the need to pass the impugned legislation so as to safeguard the interest of small depositors, an eminently reasonable requirement. The details of loans and advances given by the petitioners belies the claim of the needy or small trader. Details of certain advances made of above Rs.50,000 at the branch at Bombay are revealing. It is a list of 144 borrowers totalling a loan of Rs.2,90,00,000 ; the loans run from a couple of lakhs each to the maximum loan of over Rs. 31,00,000. There are also other loans of Rs.10 lakhs, Rs.12 lakhs and all these loans are mostly to companies, even automobiles. Now, it is

futile to suggest that these big companies or ventures which are engaged in the business of textiles, engineering, or Chemicals and which raise loans of lakhs of rupees, are not in a position to take proper loans from the banks, provided, of course, their schemes are genuine and viable. As a matter of fact, such large advances do raise a question which was before the Supreme Court in Sanchaita's case [1983] 53 Comp Case 114, whether these large funds which are put in deposits are not those which were acquired by generating and circulating black money ? Rate of interest charged by the financial corporations has also had a disturbing effect on the economy. The Study Report had indicated that the interest rate charged by the corporations is 24 to 36 per cent. though nominally what is recorded is only 18 per cent. As against this, the bank rate in 1971 was just 6 per cent. and it could legitimately be taken that the lending rate by the commercial banks to a private borrower would have been at a figure between 8 to 9 per cent. Evidently, the activities which could pay 24 to 36 per cent. interest would, by its very nature, be speculative and certainly not desirable for the healthy growth of economy - it hardly supports the claim of the petitioners that they are fulfilling a genuinely felt need of the society.

35. It has been noticed that all the reports of the Study Group had concluded that the activities of these financial corporation which are run as partnerships should be regulated in detail, and if possible, only incorporated companies be permitted to do this business. It also should be borne in mind that in the intervening decade since 1971, the progress of commercial banks has been so stupendous, that whatever arguments of financial corporations being neighborhood helpers or aiding the unorganized sector, (though they never have had any such validity), have nothing to commend it, in the changed situation. Thus, whereas in 1969, there were 3,063 bank branches in rural areas, they shot up to 25,372 by June, 1984 ; as against 10,131 total branches in rural, semi-urban and metropolitan areas, the number of total branches had increased to 58,932 by February, 1985, out of which 28,116 were in rural areas and 9,529 in semi-urban areas. There has also been a phenomenal rise in the deposits with the commercial banks as also the advances and the credit-deposit ratio. Thus, while in June, 1969, deposits were Rs. 144.96 crores and advances were 54.29 crores in rural areas, i.e., a credit deposit ratio of 37.45 percent .,deposits had risen to Rs.9,511.81 crores in June, 1984, and advances were Rs.5,946.24, making a credit deposit ration of 62.52 per cent. Similarly in semi-urban areas, deposits had risen from Rs.1,024 crores to Rs.13,814.16 crores and advances from Rs.406.57 crores to Rs.7,032.18 crores, raising credit-deposit ratio from 39.70 per cent. to 50.90 per cent.

36. As regards the total deposits with the banks which were Rs.4,665.19 crores in June, 1969, they had risen to Rs.65,056.49 crores and advances of Rs.3,608.86 crores had shot up to Rs.45,093.44 crores by June,1984.

37. The reach of the commercial banks to the average man has also tremendously increased since June, 1969. Whereas the population per branch in

June, 1969, serviced by the commercial banks was 65,000, it had been reduced to 15,000 population per branch by June, 1984. The deposits as percentage of national income had also risen from 15.9 per cent. in June, 1970, to 28.3% in June, 1984. The share of the priority sector in the total credit of public sector banks had risen from 14.6 per cent. in June, 1969, to 38.4 per cent. by June, 1984. The safety aspect of the deposits with the banks has been safeguarded by the Deposit Insurance Scheme which shows that at the end of June, 1984, the Deposit Insurance and Credit Guarantee Corporation had insured deposits to the extent of Rs.46,339.53 crores, almost 74.8 per cent. of the assessable deposits. Every depositor's deposit up to Rs. 30,000 is fully covered. The guidelines for advances to the priority sector issued by the Reserve Bank of India show that they includes direct advances for agricultural purposes for raising crops and storage facilities by constructing godowns or cold storages. The small scale industries which require investment of plant not exceeding Rs.20 lakhs, are also included in the priority sector. Advances are also permissible for persons like retail traders in essential commodities and persons wanting to set up small business, who may be individuals or firms, are also covered by it. Loans to professionals and self-employed persons like doctors, chartered accountants, lawyers and educational loans also are amongst the priority items. Thus the range and coverage of the commercial banks to the average man has now become quite all encompassing, a situation fondly desired and hoped for by the previous studies. With this background, the concern shown by the petitioners, by urging, that if their activities are limited, vital parts of the economy will be starved of funds, is a non-starter. That the financial corporations have always diluted the economy is shown by the fact that while in 1971, the banks offered only a rate of 7 per cent. for deposits for a period of 3 to 5 years, these financial corporations were giving 13 to 14 per cent. for fixed deposits of one year or more ; and even for a while, for short period deposits of up to 45 to 90 days, banks were giving 2.5 per cent. to 4 per cent. only whereas these financial corporations were giving a rate of interest of 6 per cent. This was the background wherein the impugned legislation was brought to salvage the economy and prevent further perversions.

38. It is not as if the non-banking companies had done badly in the matter of receipt of deposits. A statement, given in the compilation by the Reserve Bank of India, shows that whereas the total deposits received, which included exempted borrowings and other receipts not accounted as deposits, had risen from Rs. 1,196.9 crores to 9,184.3 crores in 1983, out of this, deposits of Rs.7,216.8 crores are in the exempted category. This statement, of course, only applies to the companies covered under the Companies Act and also Chapter III-B of the Reserve Bank of India Act. It does not include deposits with the financial corporations like the petitioners. But it does show that a very large portion of the deposits is from the exempted category and which has been maintained in the impugned legislation. Thus, the scope of deposits being taken for genuine and responsible purposes is not at all that limited as is sought to be made out by the

petitioner.

39. Grievance is then made that the requirement of bringing the requisite number of depositors to 250 within a period of 2 years is thoroughly unreasonable and figures have been mentioned to show that many of the deposits are maturing beyond a period of 2 years and it is, Therefore, physically impossible for the petitioners to comply with this direction even if they wanted to, because they cannot compel the depositors to take back their money earlier or ask for payment back of the advances which have been given, which would be necessary to repay deposits. Thus, a very somber picture is put forth, that the petitioners are being made subject to penal action for acts which were perfectly legal prior to coming into force of the Act. This situation is said to be made worse by the absence of any provision like section 58A (8) of the Companies Act which empowers the Central Government, if it considers it necessary, for avoiding or for any other just and sufficient reason to grant extension of time to comply with all or any of the provisions of that section. It was strongly argued that there being no such enabling provision, the petitioners would immediately be subject to penal provisions after the period of 2 years has run out. Now, the respondents do not accept that there would be any genuine difficulty for petitioners to comply with the requirements, excepting the ones brought in by their own volition. In that connection, Mr. Dewan argued that these financial corporations, in spite of knowing limitations placed u/s 45S(1) of the impugned Act not to have more depositors than the prescribed number, have continued to accept deposits even when they are already in excess of that number. However, the petitioners' stand is that they are not prohibited from accepting any number of deposits from the public, i.e., within a period of these two years.

40. We think it unnecessary to discuss this aspect because it does not arise in these proceedings. However, with regard to the non-compliance arising out of genuine difficulties, we have the reassurance on the record that the Reserve Bank of India has an understanding and sympathetic approach to any such cases. In this connection, reference may be made to the Circular dated July 20, 1984, issued by the Reserve Bank of India to various associations, bringing to their notice the provisions of section 45S(1) of the Act. It was specifically stated that notwithstanding the various exemptions, it had been represented to it and the Government of India, that the provisions of Chapter III-C may cause hardships to the mercantile community and in that context, in the absence of adequate material for deciding how the relative provisions of the legislation are causing hardships to the mercantile community, they were not able to take a decision on these representations. It, Therefore, asked them to fill up the pro forma and let them have the necessary date. It assured them that on the receipt of the data in the pro forma, the Reserve Bank of India proposed to discuss the matter with some of the parties, with reference to their books of account which may enable it to come to a positive conclusion regarding the hardship caused in the context of the statutory provisions, and also to enable them to forward their recommendations to the Government of India for amendment of the relative

provisions if deemed necessary.

41. A further assurance was given that whatever information is collected will be treated as strictly confidential. Notwithstanding such a helpful attitude taken by the Reserve Bank of India, it is the grievance of Mr.Dewan that no such details were supplied. The result is that the Reserve Bank of India could not possibly be faulted for not looking into the alleged hardships faced by the petitioners. Instead of co-operating with the Reserve Bank of India, the petitioners rushed to this court and in the process obtained stay, and thus refused to supply any information as sought by the Reserve Bank of India, till that order was modified by our order of September, 1985, requiring them to give part of the information sought for by the Reserve Bank of India. As such, the grievance on this core is too vague and imaginary.

42. That apart, Mr.Dewan, appearing for the Reserve Bank of India, had also fairly stated that notwithstanding the conduct of the petitioners, the Reserve Bank of India was not in any way rushing ahead in taking penal proceedings and that it was still prepared to examine sympathetically and in depth to find out if there was any genuine hardship and if necessary take consequential steps to remove them. It was also emphasised, with some justification, that the two-year period was considered reasonable, because the Study Group of 1971 had also found that most of the deposits are for a period of two years and, Therefore, it was assumed that this period will be sufficient for the deposits to be repaid. That the exercise of making amendments in order to meet a pressing situation after an experience of legislation is a common factor will be clear from the fact that the enabling provision, giving power to the Centre, in section 58A(8), to give an extension, was inserted in 1977, even though section 58A had been brought into force since 1974. Thus, the mere absence of such a power specifically cannot invalidate the legislation. Now, the Companies Deposits Rules limit the companies up to which deposits can be accepted by them and to maintain a certain liquidity ratio. The challenge to these provisions on the alleged ground of violation of article 19 was repelled in *Delhi Cloth and General Mills Co. Ltd. v. Union of India* (1983) 54 Comp Case 674 (SC). The observations made therein with regard to allowing companies to accept unrestricted deposits with inevitable damage to depositors` interest can with greater justification be applied to the financial corporations like the present which are run by individuals or associations without any semblance of control by any public authority. The court observed (at page 692) :

"To say that the protection is neither adequate nor sufficient and Therefore, of doubtful utility and, accordingly, must be rejected as arbitrary is to put a premium on these practices which necessitated a further measure of social control, taking more effective steps to checkmate the abuse of this powerful corporate sector and to leave the mischief unrepaired."

43. Further (at page 694) :

"The Legislature was not unaware of a known malady that the private sector companies were becoming sick after incurring huge debts, rendering small investors destitute, heaping miseries on the weaker sections of the society and, Therefore, if by a measure, on a company which is permitted to attract deposits from the public generally described as gullible, simultaneously, an obligation is imposed to keep an infinitesimally small portion of assets as liquid finance available for meeting the obligations, namely, repayment of deposits maturing in a given year, it cannot be said that this constitutes deprivation of the company's funds."

44. The court also observed (at page 696) :

"Even at the cost of repetition, it can be stated with confidence that the rules which prescribed conditions subject to which deposits can be invited and accepted do operate to extend a measure of protection against the notorious abuses of economic power by the corporate sector, to the detriment of depositors- investors, a segment of the society which can be appropriately described as weaker in relation to the mighty corporation."

45. At page 697 :

"Section 58A amongst various other things was designed to introduce some measure of control over the non-banking companies inviting and accepting deposits in the ultimate interest of the depositors, and by compelling limited liquidity in resources, the society at large was sought to be protected from the ever- haunting specter of sickness in industry often conveniently resorted to by the private sector companies."

46. In view of this authoritative pronouncement, any legislation which provides for placing a ceiling on deposits and maintenance of liquidity, must necessarily be held to be reasonable. It is in this context, I must emphasise, that there is justification in the stand of the respondents that in order to meet this menace, it was necessary to have suitable legislation, but it was not possible to conceive of any legislation for financing, regulating or monitoring deposit acceptance activities of thousands of unincorporated bodies having no defined constitution, no set pattern and style of functioning who gave addresses of convenience. The only alternative thus was to devise a legislative mechanism under which even unincorporated bodies which bona fide carry on their business, are not denied right of their general credit requirement and the other unincorporated which mainly deal with public deposits virtually and carry on banking activities are not allowed to do so in a manner which will jeopardise the interest of depositors. That is why, care has been taken to see that these unincorporated bodies are not starved of resources for carrying on their business.

47. A reference was made by counsel for the petitioners to a preliminary report of the World Bank with regard to the functions of the various shroffs and stress was laid on the fact of informality with which certain transactions are put through, which financial institutions are not in a position to do, and that

indigenous bankers to play a prominent role in the ICM market and the compliments paid to some of the functions, by the shroffs which carry on those services better than done by the commercial banks. But even in this report, we find that the necessity to keep a watch for the sake of depositors' safety was urged. Even he found that unnecessary funds were being given to public limited companies. He found a typical type of finance corporation in the south, having 10 partners each of them bringing in Rs.10,000 as capital. Even this report, which was strongly relied upon by the petitioners, found that at Bangalore many of the finance corporations engaged in business seemed to endanger the liquidity position and in Coimbatore, he was told of the failure of a finance corporation, with liabilities exceeding a crore, which seems to have repaid so far only 10% of its liabilities. The report also mentioned a device, which has been adopted by many of the companies, of starting firms which are under the same group of management in order to attract depositors, as directed by the Reserve Bank of India relating to non-banking companies limited the deposits which non-banking companies can accept as deposits. Thus, a business house or a financing corporation starts taking in the name of a firm closely identified in the public mind as a private limited company and its management, and avoids the constraint of the Reserve Bank of India Directions. I am afraid not much help can be drawn by the petitioners on this preliminary report.

48. Thus, even this report shows that some kind of regulations are absolutely necessary to be imposed. Now, for the purposes of protecting the depositors' interest, stringent provisions, like the ceiling on deposits, and liquidity ratio are provided in section 58A of the Companies Act and also under Chapter III-B of the Reserve Bank of India Act. These provisions have been held to be constitutional. Thus, if similar provisions had been made in the present case, even the petitioners could not raise any objection. The petitioners were well aware that if they continue to function as companies, they would be within the rigours laid down in the Reserve Bank of India Directions and statute. That this is not mere guess-work would be clear from the reply filed by the Reserve Bank and it is not controverted that the companies at items (ii) to (vi) which are the petitioners in C.W. Nos. 1366 of 1985, 1363 of 1985, 1370 of 1985, 1369 of 1985 and 1371 of 1985, have all got themselves converted in 1977, from private limited companies to firms and that they are having common partners, i.e., in order to avoid the rigour of Chapter III-B, the Reserve Bank of India Act and the Companies Act : the petitioners are resorting to the device of functioning as individuals. So, if no law was to be made regulating the activities of accepting deposits by individuals, an anomalous situation would have been created, namely, that had the petitioners carried on the same business as companies, they would be under constraint of the RBI Directions, but merely by converting themselves into individuals, they became totally free from any constraints. To permit this would be contrary to public interest. The provisions of the Reserve Bank of India Directions and the Companies Deposits Rules having been held constitutional, a similar or analogous kind of limitation on even an individual accepting deposits

cannot in any way be faulted. As a matter of fact, if the same identical provisions had been applied to individuals accepting deposits, the petitioners would possibly be worse off. This would be clear if a reference is made to the balance-sheet of Finance India in C.W.No. 1806 of 1985. It shows that the partners' capital is Rs. a lakh and about Rs. 3.75 lakhs is in current accounts and deposits from the public are over a crore of rupees. The profit and loss account as per the last balance-sheet shows a loss of Rs. 9 lakhs in the current year, i.e., the period up to March 31, 1985, and a carry forward loss of Rs. 33 lakhs. If the petitioners, in this writ petition, were to work as a company, it would not be open to it to accept any deposit because its losses exceed its capital and it has no free reserves. I am not suggesting that the legislation could not have been on a different pattern or a different manner so as to place a limit on the total amount of deposits rather than depositors. Nor is it necessary for me to hold that the impugned legislation is the last word in wisdom. So though a better alternative may have been found (though none is easily apparent), the courts are concerned only with the constitutionality and not with the wisdom of legislation which is essentially for the legislators to determine, because the judicial deference to Legislature in instances of economic regulation is a well established principle born out of the acceptance of reality that courts, lacking the capacity to inform themselves fully, about the peculiarities of a particular local situation, should hesitate to dub the legislative classification as irrational, and that legislative judgment may respond closely to local needs and courts' familiarity with those needs is likely to be limited; (See *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*,). The respondents have explained that keeping in view the overwhelming trade of the finance corporations and in the absence of any reliable date, it was not possible, administratively to keep track of each one of them and that it was considered that the better method would be to limit the number of deposits that could be taken. This, it was stated, was also borne out by the previous reports which had found that the number of depositors normally was in hundreds. Also previous reports had recommended that it could not be in the interest of all, especially the depositors, if these bodies were to work as companies. The circumstances and the nature of the activity may be such where an activity may have to be completely banned and it would not violate article 19(1) of the Constitution, as has been held in *Srinivas Enterprises v. Union of India* (1981) 51 Comp Case 464 (SC), where banning of prize chits was challenged but the challenge was repelled. It was therein the court found that the resources collected by these persons were used for wasteful spending and there were large malpractices indulged in by the promoters and also the possible exploitation of such schemes by unscrupulous elements to their own advantage. In upholding this provision, the court observed that "It is a constitutional truism that restrictions, in extreme cases, may be pushed to the point of prohibition, if any lesser strategy will not achieve the purpose."

49. The argument, in short, to comes urging that some other alternatives should have been legislated. But then, unless it can be said that the law framed is so

unreasonable that it is difficult to hold that any reasonable man could have chosen this alternative the courts restrain its hands from striking down the legislation as unconstitutional, because it must be remembered that "In matters of economics, sociology and other specialised subjects, courts should not embark upon views of half lit infallibility and reject what economists or social scientists have, after details studies, commended as the correct course of action. True, the final word is with the court in constitutional matters but judges hesitated to `rush in` where even specialists `fear to tread`." (See *Srinivasa Enterprises v. Union of India* (1981) 51 Comp Case 464 (SC)).

50. It is well settled that courts must presume that the Legislature best understands the needs and complexities of any social evil and must be allowed a free ply of choice to select the best course it deems fit. The courts has no concern with the motives of Legislature and the efforts of the petitioner in asking us to delve into it was an exercise in futility. Question of constitutionality and validity of legislature are certainly the domain of the court and it will zealously safeguard fundamental rights and not permit any trespass on a field, forbidden to Legislature, but in this examination, it necessarily must give the greatest of deference to the will of the elected representatives and their greater expertise, and a sobering thought a coequal instrumentality of State must have had good reasons for this economic legislation, unless it could be shown that the legislation was patently and demonstrably in conflict with fundamental rights, which in the present case, I cannot so hold.

51. The danger of allowing deposits to be accepted without regulation is so acute and urgent, that to bind the hands of the Legislature that only one course lone is permissible and not to permit a ply of joints would be to totally make it ineffective in meeting the challenge of the social evil. For, it must be remembered that "In the ultimate analysis, the mechanics of any economic legislation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class, the processual basis of price fixation has to be accepted in the generality of cases as valid." (See *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*,). Also such provisions check such evil must be viewed, as Krishna Iyer J. said, through a socially constructive, not legally captious, microscope to discover glaring unconstitutional infirmity, that when laws affecting large chunks of the community are enacted, stray misfortunes are inevitable and that social legislation, without tears, affecting vested rights is virtually impossible. (See *B. Banerjee Vs. Smt. Anita Pan*,).

52. The stress by learned counsel for the petitioners on the private right of the petitioners to have unrestricted deposits and make advances in any manner they like must receive short shrift, for by now, it is too well settled to be doubted that private rights must yield to the public need and that any form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the Legislature is free to adopt. See *Leo Nebbia v. People of the state of*

New York (1934) 78 Law Ed 940. The invitation to the court to go into details of various methods which could have been adopted so that while greater number of depositors could have been permitted to be accepted by firms, yet protection could also have been given to the depositors, is a futile exercise because to find fault with a law is not to demonstrate its invalidity.

53. Thus :

"The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific..... "Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void..." (See *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*,).

54. It is also well settled that every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call the trial and error method and, Therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequalities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Reign Refining Co.* (1950) 94 Law Ed 3981, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any Legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation, which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The court must, Therefore, adjudge the constitutionality of such legislation by the generally of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the Legislature can always step in and enact suitable amendatory legislation. That is the essence of the pragmatic approach which must guide and inspire the Legislature in dealing with complex economic issues. (See *R.K. Garg and Others Vs. Union of India (UOI) and Others*, .

55. I cannot, Therefore, merely because a limit has been imposed as to the number of depositors that can be accepted by an individual or an association of individuals, the legislation should be held to have imposed an unreasonable restriction. I find nothing demonstrably irrelevant or perverse in the choice made by the legislature. I have already mentioned that had the same restrictions as placed on the companies and which have been held to be constitutional been put on the petitioners, the same would have put the petitioners in a worse position; surely a legislation which imposes lesser restrictions than those which have been held constitutional cannot be held to be invalid on the ground of imposing

unreasonable restrictions. Is it not a self-defeating argument to suggest that restrictions which could be validly placed on one company accepting deposits from the public and which would be even stronger and more stringent than the ones imposed now but because instead of adopting that method, another mode has been evolved and which appears to be administratively more sound, it makes such restriction unreasonable? That there may be problems of adjustment is no argument of invalidity, for every new legislation especially economic legislation poses a situation, but that cannot be a reason for striking down the legislation as unconstitutional.

56. There is also a safeguard that Chapter III-C is being operated under the supervision and control of the Reserve Bank of India. In this regard, a reference may be made to *Joseph Kuruvilla Vellukunnel v. RBI* (1962) 32 Comp Case 514 (SC). There, the challenge was made to section 38 of the Banking Companies Act, 1949, which requires the court to make an order on the winding up of the company if an application for the same was made by the Reserve Bank of India. It was argued that this power given to the Reserve Bank of India in its sole discretion is unreasonable and arbitrary and violative of articles 14 and 19 of the Constitution. The court pointed out that the Reserve Bank has been created as a central bank with powers of supervision, advice and inspection and that it safeguards the economy and the financial stability of the country. (page 527). Rejecting the challenge on the ground that the decision is left to the Reserve Bank of India and this offends the principles of natural justice and becomes unreasonable in the light of article 19, the court observed (page 542) :

"...there are many occasions and situations in which the Legislature may, with reason, think that the determination of an issue may be left to an expert executive like the Reserve Bank rather than to courts without incurring the penalty of having the law declared void."

57. Also further (page 542) :

"...it is unanswerable that between the court and the Reserve Bank, the momentous decision to wind up a tottering or unsafe banking company in the interest of the depositors may reasonably be left to the Reserve Bank."

58. The challenge on ground of violation of articles 14 and 19, Therefore, must fail.

59. The next objection was that by virtue of limiting the number of depositors, the petitioners were being compelled against their will to form an association and that this was violative of their right under article 19(1)(c) of the Constitution to form an association. I cannot agree. No one under the impugned legislation is being compelled to form a company. All that is provided is that in the case of an individual or an association of persons the maximum number of depositors will be 25 or 250. If, however, there is a company, which is doing the business of financial institution like accepting deposits, there are no limits to the number of depositors. Thus, there are two distinct and separate classifications of institutions which are permitted to function. If they are individuals, then only the number of

depositors are limited and there are no other restrictions as to ceiling on deposits or keeping a particular liquidity as in the other case.

60. The argument of counsel for the petitioners by relying on Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, , for the observation (headnote) that "the right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association" and Excel Wear and Others Vs. Union of India (UOI) and Others, , "that under the circumstances, a person can be compelled to form an association" is misplaced because in fact there is no compulsion on the petitioner to form a company. There are two forms of carrying on this business and separate sets of rules are applicable and both are based on reasonable classification and having relation to the object to be achieved, namely, protection of depositors' interests. Thus, the plea that any compulsion was being exercised is misconceived. It is a different matter that the petitioner may find that it is not worthwhile to carry on as an individual but that is no reason to say that the legislation should be struck down because the petitioners now find that they cannot take on unrestricted number of depositors as they were taking before. This plea of violation of article 19(1)(c) must, Therefore, fail.

61. Of all learned counsel, only Mr. Potti, appearing for some of the petitioners, attacked the legislative competence of Parliament to pass the impugned legislation. Now, article 246 of the Constitution confers exclusive power on Parliament and the Legislature of the State to make laws with respect to any of the matters enumerated in List I (Union List) and List II (State List) of the Seventh Schedule to the Constitution, respectively. It is claimed that the impugned legislation falls within entry 30 (State List) of List II of the Seventh Schedule, namely, Money-lending and money-lenders, or entry 32 of List II, namely, Incorporation or unincorporated trading and has no relation to item No.45, namely, Banking, of List I (Union List). I cannot agree. It is also the petitioner's own case that their main business is of accepting of deposits and thereafter they advance money to the public and to those in trade and industry. It is their case that a depositor can be given advance against a certain percentage of his own deposits for purchase of household goods, etc. These activities have nothing to do with the activity of money lending which consists mainly of advancing from its own funds and to earn a return on it. To accept deposits is thus foreign to the activity of money-lending. Mr. Potti suggested that the impugned legislation may relate to money-lenders. But it is impossible to accept that a legislation which is not with respect to money-lending can yet be with respect to money-lenders. Both are intermixed and cannot be viewed separately. As a matter of fact, written submission by one of the counsel, Mr. Salve, in C.W.No. 1131 of 1983, specifically takes the plea that the business of the petitioner is fundamentally different from that of money-lenders, of course, it also pleads that it is distinct from banks.

62. Now, "banking" is defined in the Banking Regulation Act, 1949 to mean accepting deposits for the purposes of lending or investment of deposits of money from the public repayable on demand or otherwise and withdrawal facilities by cheques, drafts or otherwise. But for the absence of facilities to withdraw by cheque and drafts, the definition of "banking" in the 1949 Act applies to the activities carried on by the petitioners excepting, of course, that they have no cheque facilities. That this business of accepting of deposits by the petitioners is considered akin to banking has been accepted in the 1971 Study Report. In para 2.6 of its report, it was noted that the companies accepting deposits from the general public are carrying on other business which is akin to banking. Again, while dealing with the lending activity of these companies which accept deposits, it was observed in para 8.13 that these corporations are in essence banks in the sense that they accept deposits from the public and carry on the business of lending. The experts' opinion must be given due weight and I would be inclined to hold that the business that is carried on by these firms and individuals being allied and akin to banking must fall within the overall entry No. 45 of banking in List I, Seventh Schedule. It must also be recognised that the test is as certain as to which entry in the three lists of legislation is referable to it, the doctrine of pith and substance has been evolved, namely :

"If, in pith and substance, the legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another list, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence."

63. As the petitioners after accepting deposits lend out the money, Mr. Potti urged that the impugned legislation falls within entry 30 of List II, of money-lending or specifically money-lenders. Normally, the acceptance of deposits from the public is not covered by the Money-lenders Act. In this connection, Mr. Potti drew our attention to Ordinance No.96 of 1985 which is an amendment to the Kerala Money-lenders Act by which section 4 of the principal Act has been amended to provide that deposits shall be accepted only in accordance with the provisions of the Reserve Bank of India Act, and wanted to urge that this shows that the Legislature of Kerala took acceptance of deposits also to be covered by the activity of money-lending and money-lenders and, Therefore, the impugned legislation was within the purview of the said state Legislature. I cannot agree. The mere fact that the Legislature, in exercise of its powers to pass laws on money-lending, also has laid down the rule for acceptance of deposits by money-lenders, does not mean that the activities of the petitioner, which by all experts are accepted to be akin to banking, are referable to the power to be derived from the entry of money-lending and money-lenders. It should also be appreciated that Chapter III-B which was the subject-matter of challenge in *Delhi Cloth and General Mills Co. Ltd.*'s case (1983) 54 Comp Case 674 (SC) dealt with the provisions relating to non-banking institutions receiving deposits and financial institutions. The interpretation of the expressions used in Chapter III-C are to be

the same as the meaning which has been given to the words used in Chapter III-B. The provisions of Chapter III-C cover the aspect of the accepting of deposits by bodies and persons other than those covered by Chapter III-B. As the Supreme Court negated the argument of this entry falling under money-lending or money-lenders, on the same analogy, it must be held that this activity of accepting deposits by the petitioners cannot fall within entry 30.

64. In my view, this argument is concluded against the petitioners by the decision in *Delhi Cloth and General Mills Co. Ltd. v. Union of India* (1983) 54 Comp Case 674 (SC). In that case also, the legislative competence of section 58A of the Companies Act was challenged on the ground that acceptance of deposits was covered by entry 30 of List II of money-lending and money-lenders. Rejecting this argument, the court observed (at pages 699, 700) :

"Applying this doctrine of pith and substance, section 58A which is incorporated in the Companies Act is referable to entries 43 and 44 in the Union List and the enactment viewed as a whole cannot be said to be legislation on money-lenders and money-lending or being referable to entry 30 in the State List. Undoubtedly, Therefore, Parliament had the legislative competence to enact section 58A."

65. Mr. Ganesh, learned counsel for one of the petitioners, wanted to urge that the impugned legislation was covered by entry 32 of List II of the Seventh Schedule, namely, "Unincorporated trading". The argument is misconceived. The impugned legislation does not deal with trading but with acceptance of deposits. Simply because the petitioners lend out money to traders or businessmen, it does not mean that they are engaged in the business of trading. In fact, they are engaged in the business of accepting deposits.

66. We were also referred to a number of cases : *Sajjan Bank P. Ltd. v. RBI* (1960) 30 Comp Case 146 (Mad), *Itty Kurian and Another Vs. Union of India* (UOI) and Others, , *Mahaluxmi Bank Ltd. v. Registrar of Companies* (1961) 31 Comp Case 287 (Cal) and *Rustom Cavasjee Cooper v. Union of India* (1970) 40 Comp Case 325 (SC), to show what banking means. In my view, it is unnecessary to go into these details because, as I have already mentioned, experts accept that the activities of the petitioners in accepting deposits and lending out money is akin to banking and in pith and substance the impugned legislation would be covered by entry 45 of List I, Seventh Schedule. But that apart, even if the view was taken that as it is not strictly banking and would not fall under entry 45, List I, the fact remains that the argument of applicability of entry 30, List II, within which the petitioners seek to include the legislation, having been negated by the Supreme Court, the only other entry which would cover the impugned legislation would inevitably be entry 97 of List I, Seventh Schedule, which provides for any other matter not enumerated in List II or III, because as the Supreme Court says in *Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon*, : "the question to be asked is : Is the matter sought to be legislated or included in List II or List III ?" Now, admittedly, acceptance of deposits is not in List II because of *Delhi Cloth and General Mills Co. Ltd. v. Union*

of India (1983) 54 Comp Case 674 (SC). If the answer is, as the Supreme Court says, in the negative, then no question is to be asked about List I because in that case, Parliament alone has power to make laws, whether that power is referable to entry 45 or entry 97 of List I. In any case, the competence would be of Parliament and not of the Legislature of the state. The competence of Parliament, Therefore, to frame the impugned legislation cannot be doubted.

67. I feel that the stress of the whole argument of the petitioners has suffered from the assumption that unless legislation follows closely on the basis of the Expert Body Report, it must beheld that there was no material on the basis of which Parliament could have acted. Such is not how the Governments normally function. In that connection, reference may be made to the High Powered Expert Committee's Report on the Companies Act and the Monopolies and Restrictive Trade Practices Act which was submitted in 1978 and the legislation incorporating those recommendations was passed only in 1984. It sometimes becomes necessary for the executive to look into some new aspects which have since arisen and also look little more deeply into the implications of the proposed legislation. On this account alone, it cannot be said that there was no material or study before Parliament before such a legislation was introduced. There were reports from 1971 onwards and it is as a result of the cumulative effect of these reports and studies that the present impugned legislation has been passed. The argument of there being total absence of material to support this impugned legislation must, Therefore, be repelled.

68. As a result of my above discussions, my conclusions are as follows :

(a) I hold that section 45S read with section 58(5A) of Chapter III-C of the Reserve Bank of India Act, as introduced by section 10 of the Banking Laws (Amendment) Act, 1983 (Central Act I of 1984), is not vocative of articles 14 and 19 of the Constitution.

(b) There is no element of compulsion of the petitioners to incorporate themselves as a company and the grievance that article 19(1)(c) has been violated is without any substance.

(c) That the said Chapter III-C imposes reasonable restrictions on the petitioner's right to carry on business of acceptance of deposits and advancing or giving loans to the public.

(d) That there is nothing demonstrably irrelevant or perverse in limiting the number of depositors that an individual, firm or association can accept. Courts must presume that the Legislature best understands the needs and complexities of any social evil and it must be allowed a free play of choice to select the best course it deems fit. The courts are concerned only with constitutionality and not with the wisdom of the legislation which is essentially for the Legislature to determine. The question of constitutionality and validity of legislation are certainly the domain of the court and it will zealously safeguard fundamental rights and will not permit any trespass on a field, forbidden to Legislature, but in

this examination, it necessarily must give the greatest deference to the Legislature in instances of economic regulation because courts accept the reality that they lack the expertise and means to inform itself fully about the peculiarities necessitating the immediate need of particular social legislation, and unless it could be shown that the legislation was patently and demonstrably in conflict with fundamental rights, which in the present case I cannot so hold, the challenge to the virus of the impugned legislation must fail.

(e) The business of acceptance of deposits carried on by the petitioners does not fall within entry 30 or 32 of List II of the Seventh Schedule to the Constitution of India.

(f) The business of acceptance of deposits from the public falls within entry 45 or in case under entry 97 of List I of the Seventh Schedule under which only Parliament has power to pass the impugned legislation. Parliament thus had full competence and power to pass the impugned legislation.

69. The result is that there is no merit in the petition and the same will, Therefore, be dismissed. All interim stay orders given during the pendency of the writ petition shall stand vacated. There will be no order as to costs.

Leila Seth, J.

70. I agree.

71. Petition dismissed.

72. Mr. Bhat orally requests for the grant of leave to appeal to the Supreme Court.

73. The constitutionality of Chapter III-C of the Reserve Bank of India Act, 1934, has been challenged. This legislation affects institutions all over India. We are also told by counsel for the petitioners that petitions challenging the virus of this legislation have been filed in other courts also.

74. In the circumstances, we feel that this matter needs to be examined by the Supreme Court. Accordingly we grant the necessary certificate.