PETITIONER:
BHAVESH D. PARISH & OTHERS

Vs.

RESPONDENT:
UNION OF INDIA AND ANOTHER

DATE OF JUDGMENT: 12/05/2000

BENCH:
M.B.Shah, B.N.Kirpal

JUDGMENT:

KIRPAL,J.

The appellants who carry on the business of shroffs are impugning the validity of Section 9 of the Reserve Bank of India Act as amended by the Amendment Act, 1997 (hereinafter referred to as the Act) on the ground that the said provision is violative of Articles 14 and 19(1)(g) of the Constitution of India.

The trade of business of shroffs in India has been in existence for a long time. This trade is carried on not only in cities but also in small towns and villages in parts of India.

The appellants are shroffs engaged in the business of providing credit to the members of the public. The traditional mode of organising the business of shroffs over the past several decades had been by way of partnership firms. The nature of the services practised by the appellants generally involved maintaining a mutual current account where the customer may either place deposit on call or withdraw money on call, without security. The financing activity of the shroff firms was through capital contributions of the partners/proprietor and deposits made by members of the public. Some of the other activities of the shroffs include cheque discounting, the issuance of hundis, the collection of cheques from different centres and providing other similar facilities to customers. The services extended by the appellants are availed of by small and medium sized traders, professionals, salaried workers, agriculturists and individuals.

The Reserve Bank of India (hereinafter referred to as the RBI) is a statutory corporation constituted as the Central Banking Authority for the country by the Reserve Bank of India Act, 1934. The RBI is constituted, inter alia, to regulate the issue of bank notes and keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. The RBI is also vested with various powers to regulate the currency and credit system of the country. The powers so vested in RBI include the power to issue directions to non-banking institutions receiving deposits and to financial institutions. By amendment in 1963 a new Chapter III-B was inserted in the said Act. This

chapter inserted Sections 45-H to 45-Q which were provisions relating to non-banking institutions receiving deposits and financial institutions. In the Statement of Objects and Reasons it was provided that the existing enactments relating to banks did not provide for any control over companies or institutions, which, although were not treated as banks, accept deposits from the general public or carry on other business which was allied to banking. For ensuring more effective supervision and management of the monetary and credit system by the RBI, it was observed that the RBI should be enabled to regulate the conditions on which deposits may be accepted by these non- banking companies or institutions. The provisions of the said chapter III-B did not apply to individuals or firms like the appellants who are not incorporated but still do business which is akin to that of banking.

In order to place some restrictions on the acceptance of deposits by unincorporated bodies, by the Banking Laws (Amendment) Act, 1983 (Act 1 of 1984), Chapter III-C and Section 58-B(5A) were inserted into the Act. The relevant portion of principal restrictions in Chapter III-C which were contained in Section 45-S, read as under: Deposits not to be accepted in certain cases. 1) No person being an individual or a firm or an unincorporated association of individuals shall at any time, have deposits from more than the number of deposits specified against each, in the table below:

TABLE (i) Individual Not more than twenty-five depositors excluding depositors who are rel ativ es 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 Association of individuals. Not more than twenty five depositors per individual and not more than two hundred and fifty depositors in all, excluding, in either case, depositors who are relatives of any of the individuals constituting the association.

2. Where at the commencement of Section 10 of the Banking Laws (Amendment) Act, 1983, 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 deposits within the relative limits specified in that sub-section.

The constitutional validity of Section 45-S of the Act was upheld by the Delhi High Court in Kanta Mehta VS. Union of India and others 1987 (62) Company Cases 769. The main challenge was on the ground that it infringed the appellants right under Article 19(1)(g) of the Constitution of India and was violative of Articles 14 & 19 of the Constitution. While upholding the validity of Section 45-S, the High Court noted that expert reports by study groups had recommended that it would not be in the interest of all, especially the depositors, if unincorporated bodies such as

partnerships were to work as companies without any control or supervision of the RBI. This decision of the High Court was affirmed by this Court in T. Velayudhan Achari and Another Vs. Union of India and others (1993) 2 SCC 582. While upholding the validity of Section 45-S, this Court at page 591 observed as follows:

No doubt, the impugned legislation places restrictions on the right of the appellants to carry on business, but what is essential is to safeguard the rights of various depositors and to see that they are not preyed upon. From the earlier narration, it would be clear that the Reserve Bank of India, right from 1966, has been monitoring and following the functioning of non-banking financial institutions which invite deposits and then utilise those deposits either for trade or for other various industries. A ceiling for acceptance of deposits and to require maintenance of certain liquidity of funds as well as not to exceed borrowings beyond a particular percentage of the net-owned funds have been provided in the corporate sector. But for these requirements, the depositors would be left high and dry without any remedy.

It appears that Section 45-S of the Act, as originally incorporated, did not have the desired effect. The non-corporate sector was virtually free from all disciplines even though its activities were same or similar to the corporate sector, the difference only being in the magnitude and that too only in some cases. According to the respondents it was to rectify this imbalance that first an ordinance was issued which sought to completely prohibit any receipt of deposits by unincorporated associations in the non- corporate sector. When certain hardships were pointed out by those who did not carry on the business comparable to the companies which were under Chapter III-B i.e. who did not borrow money or receive advances to carry on business in the financial sector but borrow money for their own trade or manufacture, the Act, which replaced the ordinance, watered down the rigour to some extent.

The newly incorporated Section 45-S, which is impugned in this writ petition, is as follows:

45-S (1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit:

(i) If his or its business wholly or partly includes any of the activities specified in clause Â© of Section 45-I; or

(ii) If his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner.

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives.

(2) Where any person referred to in sub-section (1) other than a body corporate holds any deposit on the Ist day of April, 1997 which is not in accordance with sub- section (1), such deposit shall be repaid by that person immediately

after such deposit becomes due for repayment or within two years from the date of such commencement, whichever is earlier.

(3) On and from the date of Ist day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation For the purpose of this section:

(a) A person shall be deemed to be a relative of another if, and only if :

(i) they are members of a Hindu undivided family; or (ii) they are husband and wife; or (iii) the one is related to the other in the manner indicated in the list of relatives below:-

List of relatives

1. Father 2. Mother (including step-mother) 3. Son (including step-son), 4. Sons wife, 5. Daughter (including step-daughter), 6. Fathers father, 7. Fathers mother, 8. Mothers mother, 9. Mothers father, 10. Sons son, 11. Sons sons wife, 12. Sons daughter, 13. Sons daughters husband, 14. Daughters husband, 15. Daughters son, 16. Daughters sons wife 17 Daughters daughter 18. Daughters daughters husband 19. Brother (including step-brother), 20. Brothers wife, 21 Sister (including step-sister), 22. Sisters husband.

The principal features of the amended Section 45-S in so far as they relate to the appellants are:

(a) From 1.4.1997, no individual or firm may accept any deposit: (i) if his or its business wholly or partly includes financing activities, whether by way of making loans or advances or otherwise; or (ii) If his or its principal business is that of receiving deposits under any scheme or arrangement or lending in any manner. (b) The prohibition on the acceptance of deposits does not apply to loans from relatives. (c) A company may continue to accept deposits for financing activities or lending subject to the regulations in respect of Non-Banking Financial Companies. (d) Individuals and firms holding deposits on 1.4.1997 must repay such deposits immediately after such deposits become due for repayment or within two years (before 31.3.1999), whichever is earlier. (e) On and from 1.4.1997 no individual or firm may issue advertisement in any form for soliciting deposits. (f) All non-banking financial companies must have a minimum of Rs. 25,00,000 of net owned funds (NOF) and withdraw the deposits and/or take loans before the agricultural operations commence. The agriculturists and small traders who earn valuable interest on net deposits will no longer be able to do so.

The impugned Section 45-S does not in any way prohibit or restrict any unincorporated body or individual from carrying on the business that it likes. It is open to unincorporated bodies to carry on their financial business either from their own funds or the funds borrowed from their relatives or from financial institutions. The restriction, which is placed by Section 45-S, is on the carrying on of such business by utilising public deposits.

The grievance of the appellants is that the firms of or individual shroffs, as a result of amendment to Section 45-S, will not be allowed to accept any deposit from the public for the purposes of their business activities. There is a complete prohibition on sharafi transactions (mutual current account transactions) which had formed the bedrock of the financing activities of the shroffs. This is because individuals and firms will no longer be entitled to accept deposits on current account and the minimum period for which a non-banking financial company may accept deposit is now one year. The shroffs will now be compelled to convert from partnership firms into limited companies.

Challenging the virus of Section 45-S, it was submitted by the learned counsel for the appellants that shroffs provided the facility of deposit and loan transactions 24 hours a day and this facility was traditionally extended to customers like agriculturists, such as cotton farmers, tobacco farmers, vegetable producers etc. who had a seasonal need for finance and a periodic surplus of investible funds. The flexibility of deposit and withdrawal of the funds available to this sector which was provided by the shroff community will now cease. It was submitted that the impugned provisions are violative of the appellants right to carry on their trade and business guaranteed under Article 19(1)(g) of the Constitution. Elaborating this contention it was urged that though it is open to the Government to impose reasonable restriction in the public interest under Article 19(6) of the Constitution but impugned provisions neither met the test of reasonableness nor public interest . It was also submitted that the impugned provisions were violative of Article 14 of the Constitution being artbitrary, discriminatory and un-reasonable.

This Court in Papnasam Labour Union VS. Madura Coats limited and another (1995) 1 SCC 501 while considering challenge to Section 25-M of the Industrial Disputes Act, 1947 of being violative of Article 19 of the Constitution referred to earlier decisions of this Court and at page 511 set out the following principles and guidelines which should be kept in mind for considering the constitutionality of statutory provision upon a challenge on the alleged vice of unreasonableness of the restriction imposed by it:

a) The restriction sought be imposed on the Fundamental Rights guaranteed by Article 19 of the Constitution must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of the society and object sought to be achieved.

b) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object sought to be achieved.

c) No abstract or fixed principle can be laid down which may have universal application in all cases. Such consideration on the question of quality of reasonableness, therefore, is expected to vary from case to case.

d) In interpreting constitutional provisions, courts

should be alive to the felt need of the society and complex issues facing the people which the Legislature intends to solve through effective legislation.

e) In appreciating such problems and felt need of the society the judicial approach must necessarily be dynamic, pragmatic and elastic.

f) It is imperative that for consideration of reasonableness of restriction imposed by a statute, the Court should examine whether the social control as envisaged in Article 19 is being effectuated by the restriction imposed on the Fundamental Rights.

g) Although Article 19 guarantees all the seven freedoms to the citizen, such guarantee does not confer any absolute or unconditional right but is subject to reasonable restriction, which the Legislature may impose in public interest. It is therefore necessary to examine whether such restriction is meant to protect social welfare satisfying the need of prevailing social values.

h) The reasonableness has got to be tested both from the procedural and substantive aspects. It should not be bound by processual perniciousness or jurisprudence of remedies.

j) Restriction imposed on the Fundamental Rights guaranteed under Article 19 of the Constitution must not be arbitrary, unbridled, uncanalised and excessive and also not unreasonably discriminatory. Ex hypothesi, therefore, a restriction to be reasonable must also be consistent with Article 14 of the Constitution.

k) In judging the reasonableness of the restriction imposed by clause (6) of Article 19, the Court has to bear in mind Directive Principles of State Policy.

l) Ordinarily, any restriction so imposed, which has the effect of promoting or effectuating a directive principle, can be presumed to be a reasonable restriction in public interest.

Keeping the aforesaid principles in mind let us now examine the reasons for enacting Section 45-S.

In the affidavit filed by the respondent it has been, inter alia, stated that the growing volume of deposits with unorganised financial sector affected the operation of monetary and credit policy to the extent that it involved a loss of control by the central monetary authority on the use of these funds. Further, the unincorporated bodies were susceptible to default as the costs of funds and returns could not be matched in a viable way leading to adverse selection i.e. the funds being directed to risky illiquid investments. Whereas incorporated bodies were subject to regulatory controls, it was impossible to regulate unincorporated bodies at all. It is also stated in the affidavit that over the years, the functioning of various

unincorporated bodies was under observation and in 1984 when Chapter III-C was added to the Act, the prohibition to accept deposits was partial in the sense that unincorporated bodies were allowed to accept deposits from a limited number of depositors with no ceiling on the amount of deposit. The working of the provisions of Chapter III-C did not result in healthy development but there was a proliferation of such unincorporated bodies engaged in financial intermediation. As pointed out in para-3 of the Statement of Objects and Reasons the existing provisions were flouted by unscrupulous entities by floating different partnership firms when a firm reached the level of 250 depositors. This multiplication of firms took place with a view to circumvent the rigour of the law.

It appears that after the introduction of Section 45-S in 1984, several complaints were received by the RBI from various parts of the country regarding rampant mal-practices being adopted by several persons/firms especially in the State of Kerala. Sample studies, which were conducted, revealed several astonishing features and the menace of such unincorporated associations accepting public deposits and the mushroom growth of such intermediaries. These business firms were commonly known in Kerala as blade companies so called because of their usurious lending rates. The study showed that these blade companies drew sustenance from human greed. These blade companies were offering interest of 36% and in turn were charging excessive interest from the borrowers. By the time the study was conducted, it showed that the private financing scenario in Kerala pointed out to near desolation. Where as in 1987 the daily newspapers and periodicals were filled with flashy advertisements for attracting business subsequently most of the firms had dis-appeared. Public confidence had been shattered beyond description and the fate of several depositors stood sealed with the tragedy which had over- taken on them having lost their hard earned money. Similarly complaints were also received by the RBI of individuals/firms and unincorporated bodies accepting deposits in Tamil Nadu. The report received from that State recommended that the RBI should over-see the functioning of such financial firms and it ought to consider banning the activities in public interest.

It is the case of the RBI that the flexibility, convenience and facilities etc. provided by the appellants were turning out to be mirages for the gullible public who ultimately had to bear the burnt of the callous ways in which the unincorporated bodies extended credit under the guise of flexibility and convenience. Unquestionably high interest rates were charged by such firms from the borrowers, but when the time came for the return of money borrowed by such firms, a number of such firms had folded up resulting in great loss to the depositors. The RBI, being a statutory expert body entrusted with monetary management, came to the conclusion that these unincorporated bodies which were functioning as financial intermediaries in an informal and unorganised manner be restrained from having access to deposits from public. The spread of formal financial agencies such as, commercial banks, regional rural banks, cooperative banks, development financial institutions and non-banking financial companies etc. had taken care of the need to mobilise the domestic savings of the nation and to deploy the same in a proper manner.

As regards availability of banking facilities in small

towns and villages is concerned, the number of rural branches of commercial banks, which were 1833 in June, 1969, increased to 33069 as on June, 1996. The average population per branch has increased manifold. The regional rural banks had been established in 1975 with a view to serve the people. Several State Governments had promoted cooperative banking culture amongst the rural masses for effectively taping the resources so as to meet their credit requirements. It appears that the institutional finance is available far more easily now than before. With these facilities now being available and in view of the inherent risks to the general public at the hands of the unincorporated bodies engaged in financial activities and accepting public deposits, we agree that the restrictions now imposed by the amended Section 45-S cannot be considered as being un-reasonable.

As has already been observed, there is no total prohibition or ban from accepting deposits by incorporated bodies. It is only such incorporated bodies as are carrying on business referred to in Clauses I and II of sub-section (1) of Section 45-S of the Act which cannot accept deposits from the public. They can however receive loans from relatives. The appellants cannot claim a fundamental right to carry on the business of financing with other peoples money. In other words, there can be no unrestricted fundamental right to accept deposits from the public. This Honble Court has observed in Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India and others [1992(2) SCC 343] that there is no fundamental right to do any unregulated business with subscribers/depositors money. This Honble Court in that case upheld the directions issued by RBI requiring residuary non-banking companies to invest the amount collected by them as deposits in a particular way. This Honble Court further held that such companies should invest their own working capital and find such resources elsewhere with which the Reserve Bank has no concern. Since the deposit acceptance by unincorporated bodies is incapable of being regulated by virtue of the large number of such bodies, the provisions in the nature of the amended Section 45-S are necessary and unincorporated bodies should do their business with their own money or institutional finance or money borrowed from relatives.

The amended Section 45-S further expands the provisions of Chapter III-B by making it necessary for all those, who mobilize public funds for deployment in the financial sector, to follow the norms of prudential management which is the internationally accepted practice in relation to those handling public funds. In view of Chapter IIIB, particularly in its revised form after the amendment, it would have been highly incongruous to permit people to side step the discipline of Chapter IIIB by refusing to incorproate themselves. In view of this anomaly which has come about it was decided by the legislature not to permit such activities in the non- corporate sector. Nothing prevented the appellants who alleged to be the partners of different firms from incorporating themselves as a company. The real grievance was that the appellants did not want to comply with the norms of prudential management and, therefore, sought to paint a picture as though their trade had been prohibited. There was no impediment in the trade as long as it was carried on within the norms of Chapter

IIIB. In fact, they would have greater latitude to do trade as a corporate body, in that the present restriction on the amount of money to be deposited would stand increased. In this context, it may be emphasised that there is absolutely no restriction on any person to utilise his own funds (including the funds received from his relatives) for any purpose he likes including para banking or financial activity.

Historically, only banks have been allowed to accept deposits repayable on demand because they were subjected to maintenance of cash reserve requirement which would enable them to meet liabilities as and when they are called upon or when any demand is made for repayment. Since non-banking financial companies were not subjected to such cash reserve requirement, it was not desirable to allow non-banking financial companies to accept demand deposits. In any case, such bodies were nothing but para banking institutions and either they had to be regulated on the lines of the financial institutions and if that was not feasible, they should have appropriately been prohibited from accepting deposits from public. After all, the right to raise public deposit could not be construed as a fundamental right. The restrictions imposed cannot be considered unreasonable or arbitrary.

The RBI has not acted hastily. Before amending Section 45-S of the Act in 1997, it had the benefit of having with it the reports of number of committees, all of whom had recommended that the unincorporated business firms/individuals be brought under certain discipline and, if possible, non-banking financial business was not to be permitted to be carried on by the unincorporated bodies. It will be useful in this regard to refer to the report of the study group on non-banking financial intermediaries appointed by the Banking Commission in 1971. The study group after making a detailed study of the then existing non-banking financial intermediaries stated in respect of unincorporated bodies in para 8.25 of its report as under:

8.25 We, therefore, suggest that the Reserve Banks control may be extended to finance corporations and necessary enabling legislation be passed to that effect. We recognise that the administrative task of watching and regulating the operations of a large number of small firms will be difficult. We, therefore, suggest that if the law permits, only companies may be allowed to do the banking business in the sense of accepting deposits from the public for the purpose of lending or investment. IN that case, the Banking Regulation Act would govern the operations of the Bangalore type finance corporations. If, however, the law does not permit it, any scheme of regulation may have as one of its objections the reduction in the number of finance corporations besides, of course, the safeguarding of depositors interest.

It was further submitted that the amendments were introduced after taking into account the recommendations of successive committees, appointed by the Bank and Government of India, which had studied the functioning of these bodies. The question of restricting such financial activity by unincorporated bodies, is a question of economic policy as it involves regulation of economic activities by different constituents. In such matters of economic policy, this

Honble Court does not interfere with the decision of the expert bodies which have examined the matter. The following observations of this Honble Court made in R.K. Garg Vs,. Union of India, 1982 (1) SCR 947 at 969 are appropriate:

Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes,J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislature judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey V. Dond (354 US 457) where Frankfurther J. said in his inimitable style:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

The court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to obstract units and are not to be measured by abstract symmetry that exact wisdom and nice adaptation of remedy are not always possible and that judgement is largely a prophecy based on meager and uninterrupted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.

At page 988 it is further held:

That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the court would be last fitted to pronounce. The court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would sere the purpose in view or not.

Even if these restrictions incorporated in the Act amount to a total prohibition, such action was necessary in the public interest as the mushroom growth of unincorporated bodies accepting deposits had gone beyond control calling for restriction of the nature imposed by the amended Section 45-S. In the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and others (1987) 61 Company Cases 663, this Honble Court took judicial notice of and expressed concern about the mushroom growth of such bodies by referring to the advertisements issued by various such bodies in the press. While upholding the constitutional validity of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Srinivasa Enterprises Vs. Union of India, 1980 (4) SCC 507) this Honble Court pointed out that for saving the poor and unwary public from the unscrupulous racketeers who glamourise and prey upon the gambling instinct to get rich through prizes, banning was necessary. The court observed how can you save moth from the fire except by putting out the fatal fire ? On the same analogy for safeguarding or protecting the public from the loss which was likely to be caused to them by the failure of unincorporated bodies promising high returns, it was necessary to prohibit unincorporated bodies from accepting deposits from the public. Further, as observed by this Court in Srinivas Enterprises case (supra) it is a constitutional truism that restrictions in extreme cases should be pushed to the point of prohibition, if any lesser strategy will not achieve the purpose.

It cannot be denied that shroffs have played an important roll in providing finance in the rural sector and in small towns. But, despite the services which they may have rendered, it is difficult to accept the contention that the RBI was not justified in imposing ban on unincorporated bodies accepting deposits from public while carrying on financing business. The inherent danger to the public specially in small towns and villages in permitting such business to be carried on un-checked and un-regulatory was ample justification for the impugned legislation, keeping in mind the experience of the public which had been dealing with such unincorporated bodies in Kerala and Tamil Nadu. It is open to the appellants to organise their business within the permissible legal set up by forming non- banking financial corporations and functioning in accordance with Chapter III-B of the Act and the directives issued by the Bank from time to time. The prohibition on partnership firms to carry on their business like that of shroffs cannot be regarded as being an unreasonable restriction on the fundamental right of the appellants to carry on their trade. They can continue lending money as long as they do not borrow from the public.

The services rendered by certain informal sectors of the Indian economy could not be belittled. However, in the path of economic progress, if the informal system was sought to be replaced by a more organised system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation in question. Such a philosophy might have its merits and demerits. But these were matters of economic policy. They are best left to the wisdom of the legislature and in policy matters the accepted principle is that the courts should not interfere. Moreover in the context of the changed economic scenario the

expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalisation of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

Examining the validity of the amended Section 45-S of the Act by applying the principles enunciated over the years by this Court, and as encapsuled in the passage quoted in the earlier part of this judgment from this Courts decision in Papnasan Labour Unions Case (supra) we find that the said Section is in no way illegal or bad in law. Section 45-S no doubt prohibits the conduct of banking business by an unincorporated non-banking entity like a shroff, but this prohibition has come about, inter alia, in the interest of unwary depositors and borrowers (from shroffs) and with a view to prevent them from committing financial suicide. Earlier attempts to adequately regulate the non-banking institutions not having achieved the desired result of protecting large number of depositors from unincorporated financial institutions which would suddenly mushroom overnight and then vanish without a trace, but taking with it depositors money, left the RBI with no alternative but to prohibit such unincorporated entities from conducting financial business which was more than akin to banking.

The restrictions imposed against acceptance of deposits by unincorporated bodies carrying on financial activity or the business of deposit acceptance or lending in any manner are in the larger interest of general public vis a vis few persons accepting such deposits. The need for such restrictions had become acute and imperative in view of large scale mis-management of public funds by such unincorporated bodies.

Accordingly, we hold that the provisions of Section 45-S of the Act are valid.

Before we conclude there is another matter to which we must advert to. It has been brought to our notice that Section 45- S of the Act has been challenged in various High Courts and few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restrain in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well- settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set- aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of

accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.

While the courts should not abrogate its duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion does not abrogate from the function of weighing the overwhelming public interest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution against intervening at the interlocutory stage in matters of economic reforms and fiscal statutes.

A number of petitions had been filed in this Court seeking transfer of writ petitions pending in different High Courts. By order dated 17.2.2000, those Transfer Petitions were dismissed as not pressed. Besides the writ petitions, in respect of which, those transfer petitions had been filed, a number of other petitions are pending disposal in various High Courts. In quite a few of them the High Courts have granted an interim injunction staying the operation of the implementation of the amended Section 45-S of the Act. For the view we have taken now, it is imperative that these petitions, pending in the different High Courts, are formally disposed off at an early date. We, therefore, request all the High Courts, in which the petitions are pending challenging the provisions of Section 45-S, to dispose them of within a period of three months. Needless to say inasmuch as the validity of Section 45-S has been upheld by us, the said provision shall be liable to be enforced notwithstanding any interim orders to the contrary which may have been passed by any High Court, which interim order must necessarily now loose all its significance.

For the aforesaid reasons, this writ petition is dismissed. The respondents will be entitled to costs.