



सत्यमेव जयते

BANKING LAWS COMMITTEE

(GOVERNMENT OF INDIA)

REPORT ON INDIGENOUS NEGOTIABLE INSTRUMENTS (HUNDIS) 1978

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Hundi

REPORT
ON
INDIGENOUS
NEGOTIABLE
INSTRUMENTS
(HUNDIS)

1978

BANKING LAWS COMMITTEE
(GOVERNMENT OF INDIA)



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REPORT
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BANKING LAWS COMMITTEE

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Chairman's Office

9, Victoriya Crescent Road,

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26th September 1978

Dear Shri Patelji,

I am very happy to submit the Banking Laws Committee's Report on Hundis. Accepting the recommendation of the Banking Commission (1972), the Government entrusted to our Committee the task of codification of hundi rules and usages. We are happy to report the successful completion of this work, which has resulted in our recommendations for a Hundi Code.

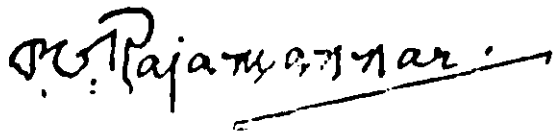
2. The work of codification is a major banking law reform which had been overdue in our country for nearly a century. The indigenous banking system was not given the attention it deserved, before the attainment of our Independence. Moreover, this work required the voluntary co-operation and participation of leading sharafi associations, chambers of commerce and industry and other trade bodies of our country concerned with hundi transactions. Either for want of sufficient attention or due to lack of understanding, the earlier attempts towards codification were not successful. We were fortunate in getting such co-operation, which was probably also due to a favourable climate which enabled the concerned associations to appreciate the value of codification for developing the indigenous banking system on sound and healthy lines.

3. The great merit of the hundi is the link it has with a specified association, which ensures that there is an inexpensive and expeditious settlement of disputes concerning hundi transactions with the legal aid and assistance available from the associations. This link of the hundi with the association is essential for the vibrant strength and vitality of the system. The provisions in the proposed Hundi Code for the issue of praman patra and majarenama and the various other functions given to the associations with reference to hundis ensure that this sustaining force behind the hundi system not only is preserved but is further strengthened.

4. Codification should help in a better recognition of the system, facilitate the removal of unnecessary constraints on the working of the indigenous banking system and it should also facilitate the study of the indigenous banking system by the organised banking sector. Hundis should then have greater currency and wider acceptability as the means for settling commercial claims. On this occasion, I would also like to thank you and the Government of India for the special support and facilities given, which really helped us to successfully complete this task of codification which has been long overdue in our country.

With regards,

Yours sincerely,



(P. V. RAJAMANNAR)

Hon'ble Shri H. M. Patel,
Finance Minister,
Government of India,
North Block,
NEW DELHI.

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CHAPTER 1

INTRODUCTION

The Banking Laws Committee has been constituted by the Government of India¹ as a One-man Committee under the Chairmanship of Dr. P. V. Rajamannar, retired Chief Justice of the High Court of Madras, to review :

- (1) Codification of commercial laws affecting banking.
- (2) Law relating to negotiable instruments and codification of practices and usages relating to indigenous negotiable instruments.
- (3) Laws relating to—
 - (a) bank deposits and collections;
 - (b) documents of title to goods;
 - (c) loans and advances generally with particular reference to banks and financial institutions;
 - (d) guarantees issued by banks; and
 - (e) letters of credit, unsecured advances and special provisions relating to recovery of loans.

GENESIS AND CONSTITUTION

2. On the Terms under reference, the Banking Commission (1972) has earlier indicated the several areas requiring review. Its Study Group which reviewed legislation affecting banking has done the necessary spade work. The Government of India have facilitated this review by appointing the Chairman of that Study Group as the Chairman of the Banking Laws Committee and by arranging to spare for the Committee the services of the Convener-Member of that Study Group, Shri R. Krishnan, who has been appointed as the Secretary to the Committee.

ORGANISATIONAL SET-UP

3. As desired by the Government of India, the Reserve Bank of India has been assisting the Banking Laws Committee on the lines of its assistance to the Banking Commission. The Special Cell of the Reserve Bank, headed by the Secretary, has been providing the secretariat for the Banking Laws Committee.

1 By their Resolution No. F. 10(5)-BC/71 dated 2nd November 1972.

REPORTS ON THE SUBJECTS

4. Having regard to the necessity in its review for an intensive study the consideration of the expert's views, organisation of research, the collection, tabulation and analysis of the required material, and the processing of the views and suggestions, and the time these efforts necessarily consume, the Committee decided to submit to the Government separate reports on the several subjects comprised in its Terms of Reference. Pursuant to this decision, the Committee's Report on Negotiable Instruments Law was submitted to the Government in 1975.¹ The Committee submitted its Reports on Real Property Security Law² and Personal Property Security Law³ to the Union Finance Minister on 2nd November, 1977.

5. Now, the Committee is submitting the final batch of its Reports (1) which reviews our law relating to documents of title to goods and (2) on its work of codifying the practices and usages relating to indigenous negotiable instruments (hundis). This Report deals with the latter.

USEFULNESS OF THE HUNDI SYSTEM

6. The hundi is the most ancient credit instrument which has survived several vicissitudes and is still providing inexpensive, expeditious and safe means for the settlement of claims by the small businessmen, retailers and traders in all parts of the country, particularly in the rural and semi-urban areas. The hundi is a means for (1) providing business credit, (2) remittance of funds and (3) financing the storage and movement of goods. Indigenous bankers or shroffs have recourse to hundis for carrying on their payment and credit transactions. Traders and merchants avail themselves of credit facilities from shroffs or remit funds by means of hundis. Merchants and traders also have recourse to hundis without the intermediation of any shroff. In other words, the hundi system has been serving from time immemorial the commercial and business requirements of our country's indigenous banking, merchant and trading communities.

DISPUTE RESOLVING ROLE OF ASSOCIATIONS

7. The role of the merchant guilds of ancient days which had performed arbitral function in the settlement of commercial claims amongst shroffs, traders and merchants has now devolved on the chambers of

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- 1 Banking Laws Committee's Report on Negotiable Instruments Law (PFD. 236 published by the Controller of Publications, Delhi-110006).
 - 2 Banking Laws Committee's Report on Real Property Security Law (PFD. 242 published by the Controller of Publications, Delhi-110006).
 - 3 Banking Laws Committee's Report on Personal Property Security Law (PFD.243 published by the Controller of Publications, Delhi-110006).

commerce and sharafi associations in their respective areas and they continue to play the dispute resolving role with reference to hundi transactions. The performance of this role by leading associations, namely, the Bombay Shroffs Association and other associations in Bombay, the Ahmedabad Shroffs Association and several sharafi associations in Gujarat and the Merchants' Chamber of Commerce, Calcutta, may be cited by way of illustration. It is this continuance of the arbitral machinery available with reference to the hundi system that operates as a chief merit of the system. With this inbuilt strength, this system should have normally gained greater credibility and wider acceptance not only among indigenous bankers, merchants and traders, but also among all sections of the business community including the corporate sector.

HUNDI SYSTEM SUFFERED FOR WANT OF CODIFICATION

8. However, no serious attempt was made to bring to the public notice the rules and practices relating to this system. In spite of the fact that the hundi rules were found as part of the rules of the merchants' chambers and of sharafi associations, the impression was allowed to gain ground, namely, that the usages relating to hundis are "bewildering" and that what is suitable to our country is only the codification of the rules relating to bills, cheques and notes as applicable in the U.K. When a negotiable instruments law was considered for India, the responsibility for codification was in the hands of Englishmen who did not try to understand the indigenous banking and business practices. Hence, the rules relating to the hundi system have remained outside the framework of the codified law in our country for nearly a century.

EXPERT BODIES' APPRECIATION OF INDIGENOUS BANKING SYSTEM AND VALUE OF HUNDI CODE

9. It was natural that consequent on Independence, there was a greater appreciation of the value of the indigenous banking practices and the usefulness of the hundi system. The Law Commission of India (in its Eleventh Report) noticed the usefulness of the indigenous banking system and the necessity for preserving the hundi system, particularly in rural areas where the Law Commission felt that there was no adequate spread of commercial banking. The Banking Commission (1972) has noticed that even with the spread of commercial banking, the indigenous banking system and the hundis have a useful complementary role. In this view, the Banking Commission has recommended the codification of the practices and usages relating to hundis. Acceptance of this recommendation by the Government of India has resulted in the entrustment of this work to the Banking Laws Committee.

GOVERNMENT'S SUPPORT

10. The Government of India have been quite considerate in responding to the requests made by this Committee and by the merchant and sharafi associations which collaborated with the Committee in the work of codification of the hundi rules, for extensions of time at different stages. Thanks to the support of the Government of India for this work and their indulgence in allowing the time that was necessary to complete this work, we have been able to fruitfully complete this task. No doubt, we were operating in a climate much more favourable than the climate in which the framers of the Negotiable Instruments Act, 1881 (NIA) and the Law Commission of India in 1958 considered the codification of the rules pertaining to the hundi system.

IMMENSITY OF THE TASK AND A FAVOURABLE CLIMATE

11. This favourable climate was due to the fact that while the indigenous banking firms were experiencing more severe competition from commercial banks even in rural areas, they and the merchant and trade bodies concerned with hundi transactions were also coming under constraints under certain provisions of the Income-tax Act which affected them from having the maximum possible recourse to the system. These factors have contributed to the success of the efforts towards codification. Nevertheless, the immensity of the task of codification may be understood when it is realised that two earlier attempts for codification have failed and that the Committee had to pursue the efforts in this regard for a period of several years (though the Committee was also simultaneously engaged in the review of other branches of laws).

COLLECTION OF MATERIAL

12. In the work of codification we were concerned with the rules and practices now current with reference to hundis and not mainly with the practices as they were decades earlier. Judicial decisions relating to hundis have been a valuable source material to us, but for the purposes of codification we could not rely mainly on them. Hence, we had to collect data from several sources regarding the current practices and usages relating to hundis.

13. As part of its spade work, the Banking Commission's Study Group which reviewed legislation affecting banking had issued a questionnaire asking for data with reference to the essential features and attributes of the hundi system (Annexure 1). This questionnaire was addressed to a number of sharafi associations, merchants and trade bodies throughout the country, banks, the Indian Banks' Association, the Federation of Indian Chambers of Commerce and Industry (FICCI) and other institutions and persons with special knowledge of the subject (Annexure 2). There was a positive response from several sharafi

associations, merchants and trade bodies and other knowledgeable persons who volunteered to give us the relevant data by way of written memoranda, specimen forms of hundis, copies of the rules of the associations concerned with hundis, and on other aspects (Annexure 3).

14. In the light of the replies, memoranda, specimens of hundis, rules of the associations, etc., and other valuable data collected from several associations and knowledgeable persons, including banks and bank officials, and the processing of the data done at the secretariat of the Committee, discussions were initiated with the representative bodies comprising of the sharafi associations, merchants and trade bodies, and all-India bodies like the FICCI, who are concerned with hundis (Annexure 4).

COLLABORATION WITH SHARAFI ASSOCIATIONS AND MERCHANT BODIES

15. The associations concerned with hundis, particularly in the eastern and western zones of our country, have got hundi committees which are comprised of experts well conversant with the rules and practices relating to hundis. We first initiated a dialogue with the experts associated with those sharafi associations and merchant bodies, enlisted their co-operation in our work and right through have been going about the whole work with their full participation. This has helped us to obtain, for the draft of the Hundi Code which we are recommending in this Report, the sponsorship and support of the FICCI and the leading associations in the different zones of our country concerned with hundi transactions, who have collaborated with us in the work of codification. The culmination of this participation and collaboration was seen in the final formal presentation of the draft proposals for the Hundi Code to the Committee by Shri Pravinchandra V. Gandhi, President of the FICCI, on the 22nd September, 1978. As may be seen from the different stages (*vide* Chapter 4) that we have gone through in completing the work of codification, these proposals, which were settled during our discussions with the representatives of the associations in the western and eastern zones of our country, reflect the basic agreement as regards the essential features of the proposals amongst all sections of the business community who are now having recourse to the hundi system for the settlement of their trade and commercial claims.

ALL-INDIA SHROFFS CONFERENCE

16. The main theme of the Fourth All-India Shroffs Conference. (1976), convened by the Joint Sharafi Conference, Bombay, which was addressed by Shri Y. J. Mohite, the then Finance Minister of the Maharashtra Government, the Chairman of the Committee, Shri M. V. Arunachalam, the then President of the FICCI, and others, was about

the proposals for the codification of the practices and usages relating to hundis. In his key-note address (Annexure 5) at this Conference, the Chairman of the Committee stressed the importance of the codification of the hundi practices and usages. The Secretary to the Committee contributed a paper (Annexure 6) on the significant role of the sharafi associations in the codification of the hundi rules.

SUPPORTING BODIES, SHROFFS AND MERCHANTS

17. We have also earlier received some thousands of representations from several associations and individual shroffs and other merchants expressing their substantial agreement with the proposals "that are being finalised" by the Joint Sharafi Conference, Bombay, and the eastern zone associations represented by the Merchants' Chamber of Commerce, Calcutta, which are now sponsored by the FICCI on behalf of all. In these representations they have also asked us for adequate status to be given to the certificates and majarenamas issued by the associations while engaged in the task of settling hundi disputes. These representations have clearly brought out the representative capacity of the sharafi associations and trade bodies who collaborated with us in the work of codification.

FICCI STRESSES SIGNIFICANCE OF CODIFICATION

18. The FICCI President has rightly stressed the merits of codification. He has pointed out (*vide* Annexure 7) that "this work of codification is overdue for over a century and at this juncture it is vitally necessary for strengthening the indigenous business practices and banking systems which enable small businessmen, retailers, traders, merchants and other members of the business community to have recourse to the inexpensive expeditious and efficient system whereunder they could have their commercial and trade claims settled. For the economic development of the rural India, the codification of the essential features of the hundi system may serve as a landmark in that it will give added respectability and certainty and facilitate the village entrepreneurs and small business men to have recourse to the hundi system with ease and derive the benefits of the system. The Law Commission of India has also earlier emphasised the necessity for preserving our indigenous banking system and the features of hundis as they provide an efficient and economic means for transmission of funds and extension of credit, including the means for financing the storage and movement of goods."

SPECIAL PROVISIONS RE. SHROFFS

19. The Gujarat Federation of Shroffs, the Ahmedabad Shroffs Association, the Shroffs Associations of Vadodara Jilla, Kheda Jilla, Mehsana Jilla, Nadiad, Anand, Petlad, Cambay and Borsad and certain leading shroffs of Bombay have separately made their submissions

(Annexure 8) to the Committee, suggesting certain additions/amplifications to the draft of the proposals for the Hundi Code, which are otherwise agreed to by all. The shroffs have submitted that 80 to 90 per cent of the volume of hundi transactions in our country relates to hundis issued/paid by shroffs and hence there is the necessity for provisions in the Hundi Code, which may be made applicable to shroffs, on the lines of the provisions applicable to bankers under the NIA (*vide* sections 85, 85A, 131 and 131A).

FORMAT OF THE REPORT

20. In Chapter 2 we give the basic outline of the features of the hundi system. Chapter 3 deals with the necessity for preserving and developing the hundi system by codification. In Chapter 4 we have sketched in brief the various stages of our work which related to codification. In this Chapter we also give the details of the extent of collaboration we were able to get from the concerned sharafi associations and trade bodies. In Chapter 5 we give the outline of the basic features of the Hundi Code which we are recommending for legislation. Part II of this Chapter gives the text of the "Hundi Code".

ACKNOWLEDGEMENTS

21. The Committee would like to acknowledge with thanks the assistance and help it has received from the Government of India, the Law Commission of India, Reserve Bank of India, the FICCI, the Fourth All-India Shroffs Conference (1976), the Joint Sharafi Conference, Bombay, comprising (1) the Bombay Shroffs Association, Bombay, (2) the Hindustan Chamber of Commerce, Bombay, (3) the Grain, Rice and Oilseeds Merchants' Association, Bombay, (4) the Bharat Merchants' Chamber, Bombay, (5) the Western India Chamber of Commerce Ltd., Bombay, and (6) the Ahmedabad Shroffs Association, Ahmedabad, the Gujarat Federation of Shroffs the Shroffs Associations of Vadodara Jilla, Kheda Jilla, Mehsana Jilla Nadiad, Anand, Petlad, Cambay and Borsad, the Merchants' Chamber of Commerce, Calcutta, and several other sharafi associations and merchant bodies who have helped the Committee considerably in successfully completing the task of codification. The Joint Sharafi Conference, Bombay (led by the Bombay Shroffs Association) in the western zone and the Merchants' Chamber of Commerce, Calcutta, in the eastern zone have done a great deal of useful work, for which the Committee is grateful to them.

22. Numerous experts and leaders of the business community have helped the Committee in several ways and have considerably facilitated this work of codification. While we are not in a position to individually acknowledge all of them, we should make special mention of the help and assistance we have received from Shri Pravinchandra V. Gandhi (President of the FICCI), Shri M. V. Arunachalam (past President of

the FICCI), Shri B. P. Aggarwala (of the Merchants' Chamber of Commerce, Calcutta and Chairman of the FICCI's Internal Trade Committee), Shri J. M. Shah (Convener, Joint Sharafi Conference, Bombay), Shri N. A. Mody (former Acting Chief Justice of the High Court of Bombay), Shri Kirtanbhai L. Deesai (President, Bombay Shroffs Association, Bombay), Shri Chandrakantbhai P. Jerajani, Shri Chunilal V. Mody, Shri R. C. Joshi and Shri Natvarlal Parikh (of the Bombay Shroffs Association, Bombay), Shri Dalichandbhai Gandhi, Shri Mehraji and Shri Guptaji (of the Hindustan Chamber of Commerce, Bombay), Shri Premjibhai Shah (of the Grain, Rice and Oilseeds Merchants' Association, Bombay), Shri Narayanbhai Lalbhai Thakkar, Shri Chhotalal Chhaganlal Thakkar, Shri Sitarambhai T. Thakkar, Shri Nareshbhai R. Parikh, Shri Gautambhai S. Shah and Shri Kanaiyalal C. Pujara (of the Ahmedabad Shroffs Association), Shri Jaykrishnabhai P. Thakkar, Shri Rasiklal R. Shah and Shri Manibhai Matibhai Gandhi (of the Kaira District Shroffs Association), Shri Manubhai M. Thakkar and Shri Navnitlal Chokshi (of the Vadodara District Shroffs Association) in the western zone, and Shri B. P. Aggarwala, Shri B. P. Saraf, Shri H. R. Bose, Shri S. S. Saraf (a leading advocate of Calcutta) and the members of the Hundi Committee of the Merchants' Chamber of Commerce, Calcutta, in the eastern zone and several others to whom we are indebted for the unstinted cooperation and help in the work of codification.

23. The Committee would like to express its high appreciation of the deep study, comprehensive analysis and indepth research of Shri R. Krishnan, the Secretary to the Committee. These have enabled the Committee to project in a proper dimension the essential and characteristic features of the hundi system. Shri Krishnan has acted as a catalyst in activating the several mercantile bodies in our country concerned with hundi transactions and has been responsible in a great measure for bringing them together and for their collaboration in the several stages gone through and for the fruitful completion of the Committee's efforts for the codification of the hundi rules and usages.

24. In his work the Secretary to the Committee has been able to get unstinted co-operation and obtain assistance from the officers (*vide* Annexure 9) attached to the Reserve Bank's cell, who have worked with commendable efficiency. The officers have also participated in many ways in the several stages through which the work of codification had to progress. The Committee also records its high appreciation of the work of Shri N. K. Ramaswami, Private Secretary to the Chairman, and Shri V. Vembu, Personal Assistant.

CHAPTER 2

HUNDIS—GENERAL

It is now recognised that the history of commercial law in Europe dates at least 2000 years before Christ and that its roots are *non-European*.¹ From ancient days there have been in use in India negotiable instruments akin to bills or cheques which were developed centuries later in the U.K. When the idea of a Negotiable Instruments Act for India was first conceived in 1866 and during the several years the matter was under consideration at the government level, the central question that loomed large was the treatment to be accorded to indigenous negotiable instruments which were then the main instruments for transferring funds and financing commercial and trade transactions. As Justice Shri Mirza had said in *Champaklal Gopaldas case*², ultimately the Negotiable Instruments Act excluded “from the its operation certain classes of hundis in the vernacular language which form the Hindu law merchant”.

“HUNDI”—ORIGIN OF THE EXPRESSION

2. Negotiable instruments which were thus native to the soil were, and are still, known as “hundis”. C. N. Cooke had pointed out that the word “hundi” or “hoondee” or “hoondy” used to describe an indigenous negotiable instrument seems to be a corruption from the word “Hindi” or “Hindu”,³ though Bhashyam has expressed that the word “hundi” is a generic term used to denote an instrument of exchange in vernacular, and is derived from the Sanskrit root “hund” meaning “to collect” and well expresses the purposes to which such instruments were utilised in their origin⁴.

MERCHANTS' CODIFICATION OF THE HUNDI RULES (1870)

3. *The exclusion of indigenous negotiable instruments from the scope of the codified statute was evidently not due to any great difficulty felt in ascertaining the several rules which governed such instruments. These rules were clearly enunciated in the documents drawn-up by and between indigenous bankers and traders when the*

1. “Introduction to European Commercial Law”, Frederick Wallach, Oceana Publications, page 16.
2. *Champaklal Gopaldas and another v. Kesricchand Naganmal*, I.L.R. Vol. L (1926) Bombay, 765.
3. “The Rise, Progress and Present Condition of Banking in India”, C. N. Cooke, Calcutta, 1863, page 21.
4. “The Negotiable Instruments Act, 1881”, Bhashyam and Adiga, 13th edition, page 49.

Negotiable Instruments Act, 1881 (shortly, NIA) was conceived in India. For instance, it is seen from *Jadowji Gopal and others v. Jetha Shamji and others*¹ that *the principal dealers in jokhmi and non-jokhmi hundis drawn from Bombay on places in Kutch and Halar had settled their rules and other particulars in regard to such hundis and had signed a document dated 15th August 1870 in this behalf. The same had been printed in 1871 at Dastar Ashkar Press, Bombay, as a Gujarati pamphlet.*

4. Though this version of the codification of the hundi rules is not now available, the several merchants' and traders' associations in different parts of our country have been using, for their decisions on hundi disputes the standard version of hundi rules adopted by such associations. This feature has been a time-honoured role of the sharafi and merchants', associations concerned with hundi transactions.

ENGLISH COURTS HAD NO DIFFICULTY

5. Again, while going through the reported decisions arising on account of disputes with reference to hundi transactions, it is found that English judges were able to ascertain without difficulty the rules or customs which were governing these hundis. However, the law relating to hundis has not been codified in India so far.

ENGLISH DRAFTSMEN TURNED NELSON'S EYE TO HUNDI RULES

6. When the NIA was conceived in 1866 and during the discussions on the Bill, as already stated, the central question was about the treatment to be given to hundis. The English commercial and banking communities were keen that the principles of the law with which they were familiar, namely, the principles enunciated in English cases with reference to bills, cheques and notes, should be the law of negotiable instruments for India. Evidently, this suited their commercial convenience and this view prevailed since it found governmental support. Though it is clear that the NIA, as originally conceived, was mainly based on the principles settled in English cases with reference to bills, cheques and notes, the subsequent changes to the Bill had also been mainly with a view to bring the provisions thereof completely in line with the English law. The Members of the Governor-General in Council, while admitting the desirability of codification, had objected to the draft Bill on account of its deviations from English law.² The Select Committees which had gone into the Bill had concerned themselves mainly with the changes necessary to render the Bill conformable to the English law.

1. I.L.R. 4 Bom. (1880), 333.

2. The Preliminary Report of the Select Committee on the Bill, dated 4th October, 1877, the Gazette of India, October 13, 1877.

HUNDI TRANSACTIONS COULD NOT BE IGNORED

7. But the Government could not ignore completely the hundi transactions since they were sizeable and then encompassed practically all the commercial and trade claims amongst the native shroffs, merchants and traders.

NIA AND THE HUNDI RULES

8. *The original idea was to completely eschew the application of the NIA to the hundis.* Hence, the Bill originally provided that "Nothing in this Act applies to hundis". But later on, in the Second Report dated 27th May 1878 of the Select Committee, statutory recognition had been given to a ruling which Colville, C. J., had given in *Amritram v. Damoodhurdass*¹ that the English law would apply when the analogy between bills and hundis was complete and there was no proof of any special usage. The Select Committee had expressed :

"We think that we should give effect to this ruling, and have therefore changed the words.....to 'Nothing herein contained shall affect any usage relating to any instrument in an oriental language'. This change will not only save the custom by native merchants as to hundis, but also their customs (if any such exist) as to promissory notes and cheques".

LAW COMMISSION'S EFFORTS PROVED FUTILE

9. When the revision of the NIA was under the consideration of the Law Commission of India in 1958, suggestions were made to that Commission by some of the sharafi and allied associations that hundis should be allowed to retain their peculiar incidents according to usages and that those usages should be codified. On these suggestions, the Law Commission (in its Eleventh Report) observed :

"It is, however, not easy to define a hundi or to discover its essential attributes. It would appear from the text books and judicial decisions that no less than a dozen varieties of hundis are in vogue in this country. The usages differ so widely as between these species and from place to place that we can discover only a few characteristics or incidents which may be attributed to hundis in general....."

(emphasis added)

After citing some characteristics relating to hundis which the Law Commission noticed with reference to certain types of hundis, that Commission observed :

"The foregoing account of some of the hundis would suffice to show that it is not possible to evolve uniform rules applicable to hundis of

1. Hyde 261.

2. Report of the Law Commission of India (Government of India) on the Revision of the Negotiable Instruments Act, 1881, (1958), paragraph 14.

the various kinds for the purpose of codification. The Bharat Chamber of Commerce, Calcutta, furnished us with a copy of Rules which have had the approval of eleven trade associations. But these Rules relate to one kind of hundis only, namely, Darshani hundis, and we have not been able to discover whether there are any agreed Rules governing the other kinds of hundis, or whether the Rules referred to by the Bharat Chamber are accepted throughout the country.

Codification not being possible, we must leave such instruments in use as at present.”³

NATURE OF THE PROBLEM

10. The difficulty experienced by the Law Commission of India was essentially due to the paucity of data and the incomplete text book analysis found of the features of the instrument, its varieties and an undue emphasis that has been placed over the course of years on the marginal differences found in the usages relating to the different forms of hundis between the different parts of our country.

VALUE OF FIELD STUDY

11. Again, the inadequate comprehension was also partly due to the absence of a field study that could not be conducted earlier with reference to the different forms of hundis in vogue in our country. This was also partly due to the overemphasis placed on the decisions of the courts rendered from time to time with a view to determining the validity of the practices and usages relating to various forms of hundis. Though these judicial assessments relating to the different forms of hundis are no doubt very relevant to our study of the subject, they fail to give us a comprehensive picture of the hundi system, which is possible only by undertaking a field study.

ASSOCIATIONS' ASSISTANCE IN THE STUDY

12. This study had to be undertaken in collaboration with the various sharafi and allied associations playing a crucial role in the regulation of hundi business. We are glad to record that in our efforts towards the codification of the hundi rules and practices, we have been able to conduct such a study. As a result of this study and the painstaking and voluntary work put in by the collaborating associations, we have been able to get a clear picture of the hundi system as it presently functions. This has really helped us, in a practical sense, in our efforts towards codification of the rules and usages relating to hundis.

³Report of the Law Commission of India (Government of India) on the Revision of the Negotiable Instruments Act, 1881, (1958), paragraph 16.

LAW COMMISSION'S VIEWS RE. INSTRUMENTS WITH INCONSISTENT USAGES

13. The Law Commission of India had also proposed that bills, cheques and promissory notes should be governed by the provisions of the NIA (or the version suggested by that Commission to replace the said enactment) and that no usage or custom at variance with any such provisions should apply thereto. This would cut as under the link between the indigenous negotiable instruments and the NIA. In view of the then failure of the efforts towards codification of the rules and usages relating to hundis, the Law Commission had no alternative but to suggest that the hundi system may be allowed to exist entirely outside the framework of the codified law.

HUNDIS—A CLASS BY THEMSELVES

14. Though with reference to some of its features the hundi bears a striking comparison with a bill, cheque or note and the provisions applicable to these instruments under the NIA, the validity of the recommendation made by the Law Commission, namely, that the law relating to hundis need not be a part of the NIA, may have to be acceded to, since hundi is a class by itself.

15. The NIA has confined itself only to three classes of negotiable instruments, viz, bills of exchange, cheques and promissory notes. In view of this, the courts in India have held that the indigenous negotiable instruments (especially shahjog hundis) are neither bills, nor cheques nor promissory notes and as such they are wholly outside the purview of NIA.

NIA PROVISIONS MAY AT BEST AFFORD ANALOGY

16. Over the course of years, in cases where there was no inconsistent custom or usage applicable with reference to any form of hundi, courts of our country had relied on the provisions of the NIA to determine disputes with reference to hundis. Thus, the provisions of the codified law were providing some guidance and were serving as an analogy in deciding disputes with reference to hundis where the custom or usage was *not* at variance with the provisions of the statute.

DIFFERING VIEWS OF HIGH COURTS RE. NATURE OF COMPLIANCE WITH NIA

17. There has been a difference of opinion among the High Courts as to the basis for applying any provision of the NIA to hundis even when there are no specific usages or practices proved with reference to any particular aspect. In such circumstances, while the Allahabad High Court seems to apply the provisions of the NIA "on the ground of the reasonableness of the rules" in the NIA, the Bombay High Court seems to

apply the NIA provision "as a matter of course."¹ In *Central Bank of India v. Khubram Roop Chand*,² the Punjab High Court has held that where there are no inconsistent usages or practices with reference to hundis, the provisions of the NIA "must 'substantially' as contradistinct from 'technically' be complied with". Thus, when there is no practice or usage to decide the question, the provisions of the NIA are not *proprio vigore* applied to hundis and in such cases, a substantial compliance with the NIA provisions is required.

SUBSTANTIAL COMPLIANCE—AMBIGUOUS CONCEPT

18. However, the concept of substantial compliance is always a difficult question to decide. This concept lacks commercial certainty and leaves parties with a sense of doubt on the question as to whether or not in a given circumstance there has been the required compliance with the provisions of the NIA.

CUSTOM OF PLACE OF DRAWING V. PLACE OF PAYMENT

19. It is not also clear now as to which usage should be upheld with reference to hundis when the local custom/usage of the place where the instrument was drawn differs from that of the place where the instrument is payable, for instance on the understanding as to the concepts relating to shahjog hundis in Maharashtra and Gujarat on the one hand and West Bengal and Assam on the other.

HUNDI—AS AN INSTRUMENT IN ORIENTAL LANGUAGE

20. Many authorities have attempted to define "hundi". One of the definitions is "hundi is a negotiable instrument written in an oriental language". This definition is very vague and does not include all the aspects of hundi. The cheques are also presently allowed to be written in any Indian language in addition to English. We have also received specimens of hundis written in English.

HUNDI DEFINITION BY L. C. JAIN

21. In his thesis on "Indigenous Banking in India", L. C. Jain defines "hundi" as under :

"In simple words, a hundi may be defined as a written order—usually unconditional—made by one person on another for the payment, on demand or after a specified time, of a certain sum of money to a person named therein. This definition, it may be pointed out, differs from that of an English bill of exchange in one important respect. While an English bill must be an unconditional order, a hundi may not be so, e.g., a Jokhami hundi".³

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1. "The Negotiable Instruments Act, 1881" Bhashyam and Adiga, 13th edition, page 577.
 2. (1960) Punj. 157.
 3. Indigenous Banking in India by L. C. Jain (1928), page 71.

HUNDI DEFINITION SHOULD NOT BE RESTRICTIVE

22. Hundis now evidence the deposit, payment and collection transactions of merchants and traders in different localities. When a statutory definition of "hundi" is considered, it is to be borne in mind that the definition should also allow the hundi system to spread to other merchant communities and business transactions.

HOW CONDITIONAL

23. The crux of the distinction between hundis and other negotiable instruments is perhaps the presence of conditions which are attached to hundis by practices and usages and the absence of such conditions with reference to the instruments governed by the NIA. The conditions should be reasonable and they should have some intrinsic value meriting legislative protection. Hence, it is necessary to make a reference to certain characteristics of hundis in the definition of "hundi".

CONDITIONS RE. A DARSHANI HUNDI

24. For instance, a "darshani" hundi may be held "khadi", that is, unpaid by the drawee for a period not exceeding three working days excluding the date of presentment for noting without the same being regarded as dishonoured by non-payment. In the western zone of our country, the condition to make payment of a hundi to a "shah" in respect of a shahjog hundi is also a distinguishing feature of a darshani hundi.

CONDITION RE. BILTI HUNDIS (i.e., DOCUMENTARY HUNDIS)

25. As regards a documentary hundi (known as "bilti hundi") the hundi rules provide for (it is understood as a requirement) reference in the body of the hundi to the transaction which has given rise to it. It is a condition of payment that the document should be validly transferred by the holder to the drawee before the latter is authorised to make payment.

NEED FOR RECONCILING USAGES RE. HUNDIS

26. Under the existing usage in the western zone of our country, the payment of a shahjog hundi is to be made to a "shah". As per the custom followed in Bombay and Ahmedabad, "shah" is a person of worth and substance known in the bazaar. In these places, the shahjog hundi is understood as a special class by itself. However, as per the practice in vogue in the eastern zone of our country, the expression "shah" in a shahjog hundi has come to be regarded as merely of an honorific significance. Thus, there is the need also for reconciling some of the conflicts relating to the hundi system.

EMERGING PICTURE

27. The emerging picture with reference to the hundi system which has been in existence in our country from time immemorial may be summed

up thus. The hundi system had developed in our country and the rules and principles governing the same were clearly understood and applied by the shroffs, merchants and traders who had recourse to hundis for settling their commercial and trade claims. The rules relating to the system, which were considered by the courts of our country as forming part of the Hindu law merchant, had been stated in clear terms even by the year 1870 as seen from a reference to a document dated 15th August 1870 which was printed in a Bombay press. The courts in our country were able to ascertain without difficulty the applicable rules with reference to any disputes relating to hundis by drawing on the expertise of the merchants and trade bodies concerned with the settlement of hundi disputes and referring to the hundi rules of the mercantile associations.

28. Nevertheless, the draftsmen of the NIA were not in favour of codifying the hundi rules in our country since evidently their purpose was to apply in our country the principles enunciated in English cases with reference to bills, cheques and notes with which the English traders were conversant. It is in view of this attitude and their possible lack of understanding of the rules relating to hundi transactions, it was expressed by them that the usages relating to hundis were bewildering. On this assumption, the draftsmen of the NIA had hoped that the merchants and traders of this country would voluntarily abandon recourse to hundis and have increasing recourse only to the medium of bills, cheques and notes (as per the NIA rules). The survival of the hundi system over a century since the enactment of the NIA is a positive proof of the fact that the hundi system serves the genuine commercial needs and that the system which has taken roots in our country from ancient days is there to stay forever.

29. It is in the above context we have to consider the measures necessary for codification of the rules, customs and usages relating to hundis. The difficulty faced earlier by the Law Commission of India in 1958 (in its Eleventh Report), which is evident from its statement that "it is, however, not easy to define a hundi or to discover its essential attributes" and that "codification not being possible, we must leave such instruments in use as at present", was due to the paucity of data for that Commission.

30. We are glad to record that in our efforts towards codification of the hundi rules and practices we have been able to collect adequate data and study the position in collaboration with the various sharafi and allied associations who have put in painstaking and voluntary work for developing acceptable proposals for an all-India legislation to codify the rules, customs and usages relating to hundis.

31. The characteristic feature of a hundi, as distinct from an NIA paper, relates to the conditions subject to which the hundi is drawn. As instances we may refer to the practice of keeping a hundi "khadi" for a period not exceeding three working days from the date of its presentment for payment during which the hundi is not considered as dishonoured the condition relating to the accompanying of documents with reference to bilti hundis and the prevailing understanding with reference to shahjog hundis in the western zone of our country. Thus, we agree with the Law Commission of India that hundis are a class by themselves and being *sui generis* it is not necessary to apply to hundis the provisions of the NIA.

32. Nevertheless over the course of years, in settling hundi disputes, when there is no custom or usage which is not in variance with the provisions of the NIA, the principle of relying on the NIA provisions by way of analogy has gained acceptance by courts. In this view, even as regards hundis, when there is no custom clearly pointing out otherwise, substantial compliance is required with the provisions of the NIA. This concept lacks commercial certainty and leaves parties with a sense of doubt on the question as to whether or not in a given circumstance there has been the required compliance with the provisions of the NIA. This is an inherent difficulty arising from the doubtful extent of the application of the provisions of the NIA to hundis. This difficulty would be obviated on the codification of the provisions to be applied to hundis.

33. In considering the scope for such codification, it is also necessary to reconcile inconsistent usages. For instance, we may refer to the understanding in the western zone of our country on the concept of "shah" (in a shahjog hundi) who is regarded as a man of worth and substance known in the bazaar and the understanding in the eastern zone of our country where the expression "shah" in a hundi is regarded as merely of an honorific significance. Again, whether in a given case we should apply the custom prevailing at the place of payment or the place of drawal of the hundi is not clearly settled. Codification of the hundi rules should also help to clear the ambiguities and inconsistencies noticed at certain places and at certain times with reference to the customs and rules relating to hundis in force in the different parts of our country.

CHAPTER 3

CODIFICATION—A NECESSITY FOR PRESERVING AND DEVELOPING THE HUNDI SYSTEM

The Banking Laws Committee has been asked by the Government of India to consider the codification of the practices and usages relating to indigenous negotiable instruments (hundis).

RECOMMENDATION OF THE BANKING COMMISSION

2. The subject of codification of the practices and usages relating to hundis was made a Term of reference to the Committee consequent on the Government accepting the following recommendation of the Banking Commission (1972) which reads :

“The provisions of the Negotiable Instruments Act, 1881, as such do not apply to hundis. It is necessary to codify the practices and usages applicable to such indigenous negotiable instruments and bring these instruments within the framework of the codified law. We also recommend the drawing up of standard forms of Darshani (Sight) and Muddati (Usance) types of hundis”¹

LEGISLATION STUDY GROUP'S QUESTIONNAIRE

3. Even during the tenure of the Banking Commission, a Study group constituted by it to review legislation affecting banking had taken up several issues relating to hundis as part of a general assessment of the banking and commercial laws of our country. The questionnaire issued by this Study Group with reference to hundis (given as Annexure 1 to this Report) posed for consideration some of the salient aspects meriting examination with reference to hundis. In addition to calling for data on the general forms of hundis and the rules and terms governing them, this Study Group had also invited views and comments on the desirability or otherwise of continuing the hundi system.

ASSESSMENT OF THE UTILITY OF THE HUNDI SYSTEM

4. The Legislation Study Group referred in its questionnaire to the assessment made by the Law Commission of India, when it considered the revision of the Negotiable Instruments Act, 1881 (shortly NIA), that so long as we are not in a position to have an efficient bank in each village, there should be recourse to the use of hundis.

¹Report of the Banking Commission (1972) (Government of India), paragraph 18.96 and Recommendation No. 294.

AFTER THE SPREADING UP OF BANKS

5. In the above context, the Legislation Study Group had asked :
 “In view of the recent developments and the aim of the banking system now to reach, if not each village, at least each group of villages, do you think that the time is ripe for considering the abolition of indigenous negotiable instruments not coming within the scope of the Negotiable Instruments Act ?”¹

SELECT COMMITTEE'S VIEWS ON THE HUNDI SYSTEM

6. The said Study Group had also referred to the discussion regarding the hundi system in the Select Committee which went into the Negotiable Instruments Bill in 1879.

7. The NIA was originally drafted in 1866 by the Indian Law Commission and after it was introduced in the Council of the Governor-General of India it was referred to a Select Committee. On the objection taken by the mercantile community, the Bill was recast on a large scale in 1877. The Bill was thereafter revised in 1880. By the order of the Secretary of State for India, the Bill was then referred to a new Law Commission, composed of Sir Charles Turner, Mr. Justice West and Mr. Whitley Stokes. One of the important additions made by the Law Commission was the saving of the local usages relating to hundis. The Bill was again considered by a Select Committee and was eventually passed into law in 1881.

8. Regarding the indigenous negotiable instruments, there were two schools of thought. While one school was for the total exclusion of hundis from the operation of the NIA, the other was in favour of the application of the NIA in its entirety to such instruments.

9. In 1878, while observing that it is desirable to have uniformity in mercantile usages, the Select Committee had hoped that—

“the numerous local usages (there is no general custom) as to hundis, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction... but we believe that the effect of the Bill, if passed with the saving of the local usages in question, will be not... to stereotype and perpetuate these usages, but to induce the native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity on mercantile usages will thus be brought about without any risk of causing hardship to native bankers and merchants. How long this change will take is of course impossible to prophesy.”²

¹First Report of the Study Group Reviewing Legislation Affecting Banking—Banking Legislation (Banking Commission, Government of India) (1971), page 212.

²The Gazette of India—Calcutta; March 1, 1879—Part V, pages 91-92.

10. One of the members of the Select Committee, Mr. E. C. Morgan, in a note of dissent, expressed his opinion as follows :

“Although I think that this Bill is, on the whole a very good one. I cannot approve of the recognition which it accords to local usages relating to hundis. From a careful consideration of the papers which have been received with reference to the Bill, and from my own experience as regards the existing practice regarding hundis, I do not believe that there are any usages which call for special recognition at the hands of the legislature, and I think that the proposed recognition may put an arm into the hands of those who are dishonestly disposed, which they do not at present possess.”¹

The Legislature had solved the controversy by adopting a *via media* in saving local usages from the operation of the NIA by incorporating the following proviso to section 1 of the NIA :

“...nothing herein contained...affects any local usage relating to any instrument in an oriental language, provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act,....”²

EXPECTATIONS UNFULFILLED

11. Subsequent assessments have proved that the expectations of the Select Committee that the hundi system will in the ordinary course of nature meet with its end, have been belied. In fact, it had been observed that :—

“Our businessmen still continue to stick to the ‘bewildering usages governing these instruments’.”³

CENTRAL BANKING ENQUIRY COMMITTEE

12. About hundis, the Indian Central Banking Enquiry Committee 1931, had observed that—

“there is no legal definition of a hundi. It is governed by custom and usages of the various localities, and only where no specific custom exists does it come under the term ‘bill of exchange’ within the meaning of the Negotiable Instruments Act.”⁴

¹The Gazette of India—Calcutta; March 1, 1879—Part V, pages 91-92.

²Proviso to section 1 of the Negotiable Instruments Act, 1881.

³First Report of the Study Group Reviewing Legislation Affecting Banking—Banking Legislation (Banking Commission, Government of India), (1971), page 211.

⁴Report of the Indian Central Banking Enquiry Committee, 1931, Government of India, Vol. I, Part I, paragraph 590.

LEGISLATION STUDY GROUP'S ASSESSMENT

13. The Banking Commission's Study Group which reviewed legislation affecting banking had thus commented, after posing the questions referred to *supra* :

"This raises certain questions such as whether the law should permit the continuance of such indigenous negotiable instruments; if so, whether the usages and practices governing them should be codified and they should be brought within the scope of the Negotiable Instruments Law. The views, in this behalf, of the Banking Commission's Study Group on Indigenous Bankers have also to be taken into consideration."¹

ASSESSMENT BY THE INDIGENOUS BANKERS STUDY GROUP

14. The Banking Commission's Study Group on Indigenous Bankers has also made an assessment of the hundi system as the instrument employed by the indigenous bankers as the medium for their transactions. After noting that the system of drawing of hundis has been in vogue in our country since ancient time, and coming down to the observations of the Select Committee on the Negotiable Instruments Bill, 1878, this Study Group referred to the fact that the indigenous bankers still continue to employ the usages governing these instruments and that the legal position of the hundi today is precisely the same as described by the Indian Central Banking Enquiry Committee in 1931. This Study Group also noticed that the usages as to the negotiable paper are gradually changing and the tendency is to bring them more and more in keeping with the modern style of banking.

FUNCTIONAL ROLE OF THE HUNDI SYSTEM

15. As pointed out by the Banking Commission's Study Group on Indigenous Bankers,

"Hundis perform one or other of the three functions, viz., they are instruments used to (i) raise money, (ii) remit funds and (iii) finance inland trade. Because the hundi performs one or other of the above essential functions, it has been used throughout the country for generations and its popularity has not significantly waned."²

ALL FORMS OF HUNDIS NOT IN USE

16. After referring to the several forms of hundis and the merchant communities in the different areas of our country where such forms of

¹First Report of the Study Group Reviewing Legislation Affecting Banking—Banking Legislation (Banking Commission, Government of India), (1971), paragraph 8-8.

²Report of the Study Group on Indigenous Bankers (Banking Commission Government of India), (1971), page 47.

hundis are generally prevalent, the Study Group on Indigenous Bankers has observed that—

“All the various types of hundis described above are, however not in use. By and large, many of them have fallen into disuse. Only three types of hundis are currently in use and these are the Shahjog, Namjog and Dekharnarj g hundis. Of these three, Shahjog is the most popular and the most widely used hundi. What is significant is that hundis are the oldest surviving credit instruments and still continue to be popular. This is because hundis have been regarded as instruments with some measure of safety. There are built-in safeguards in hundis so that they cannot be forged easily. This has apparently helped to sustain their popularity.”¹

ROLE OF THE ASSOCIATIONS

17. The Study Group on Indigenous Bankers has also referred to the role of the associations with reference to the hundi system. Referring to the majarnama issued by the associations, this Study Group has said :

“The majarnama of the Sharafi Association is stated to have the weight of a court award, because invariably on the production of this majarnama, the maker of the hundi returns to the Rakhya not only the original amount with interest, but pays ‘nakarnamana shikaraman’ (damages for dishonour) according to the custom of the place. One of the great attractions of the hundi appears to be the low cost of litigation and swift Justice.”²

RAISING THE STATUS OF HUNDIS

18. While considering that indigenous banking agencies may become useful adjuncts of the organised banking system, the Study Group on Indigenous Bankers has recommended as under :

“However, the hundi business must work under arrangements which enable it to respond effectively and quickly to the needs of the borrowers depending upon this market. Raising the value and status of the hundi, bringing new borrowers into the hundi market, introducing new financing techniques and accepting new types of business should help to achieve this objective and further enhance the usefulness and responsiveness of the hundi business.”³

(emphasis added)

¹Report of the Study Group on Indigenous Bankers (Banking Commission Government of India), (1971), page 49.

²Report of the Study Group on Indigenous Bankers (Banking Commission, Government of India), (1971), page 53.

³Report of the Study Group on Indigenous Bankers (Banking Commission, Government of India) (1971), Recommendation No. VII. 15.

CODIFICATION—THE ALTERNATIVE TO DISCONTINUANCE

19. It is in this context that the Study Group on Indigenous Bankers was not in favour of "the discontinuance of the indigenous negotiable instruments not coming within the scope of the Negotiable Instruments Acts" and instead has suggested the "codification" of the peculiar incidents and usages and bringing them within the NIA. For this purpose, the Study Group has recommended that—

"the Study Group to Review Legislation Affecting Banking could suggest which of the usages and incidents applicable to the different types of indigenous negotiable instruments could be given legal recognition and which are beyond the pale of legal sanction"¹

CONSTRAINTS ON THE HUNDI SYSTEM

20. While recommending codification with the above objective, the Study Group on Indigenous Bankers as also referred to some of the statutory constraints now found to be operating with reference to the hundi system. For instance, it has referred to the provision of the Income-tax Act, 1961, viz., section 40A(3), and has found that the effect of this provision has resulted in—

"shutting out the use of the darshani hundi; all that has happened is that it has resulted in a very sharp drop in the hundi business by depriving the country of useful payment instrument".²

Accordingly, the Study Group has recommended exemption of the darshani hundis from the scope of the said provision.

INDIGENOUS BANKERS' LINK WITH THE HUNDI SYSTEM

21. The study Group on Indigenous Bankers has relied on professional dealings in hundis as a criterion for distinguishing indigenous bankers from other classes of moneylenders,³ though on this aspect the Banking Commission has pointed out that indigenous bankers who do not accept deposits from the public for the conduct of their business may be regarded only as a class of moneylenders.⁴ However, with reference to the working of the hundi system and the need for improvement in the system, the Banking Commission has agreed with the recommendations of its study Group on Indigenous Bankers.

¹Report of the Study Group on Indigenous Bankers (Banking Commission Government of India), (1971), Recommendation No. VII. 36.

²*ibid*, page 51.

³Report of the Study Group on Indigenous Bankers (Banking Commission, Government of India), (1971), Recommendation No. VII. 18.

⁴Report of the Banking Commission (Government of India) (1972) paragraph 18.82.

22. The Banking Commission has hoped that with the implementation of its several recommendations relating to indigenous banking agencies, including that for the codification of the practices and usages relating to hundis, the scope for abuses in the indigenous banking system would be considerably reduced and—

“the utility of these agencies to the economy can be considerably enhanced. Although the commercial banks are expected to give much greater attention to satisfy the needs of the small borrowers of various types than in the past, it is unlikely that they will be able to displace indigenous bankers altogether. Nor does the Commission think such displacement essential. A more useful course would be to adopt measures so that these agencies work in conformity with the overall credit policy.”¹

23. The above view of the Banking Commission supports what the Law Commission of India has earlier expressed while bestowing attention on the work of codification of the practices and usages relating to hundis. Though the Law Commission could not meet with success in its efforts, it recognised the usefulness of the hundi system. That Commission had taken up this work while going into the revision of the NIA. The Law Commission had addressed itself to the question whether the hundi system should be continued since codification was not possible and it was then considered by the Commission as impracticable.² The Law Commission had also observed that—

“Having given our anxious consideration to the question, we are of the opinion that hundis and the shroffs who finance commercial transactions through hundis do a very useful service over the larger part of the country, particularly in the villages where the modern banking system has not so far been extended. Though it would have been a great advance towards securing uniformity of the law if all negotiable instruments could be brought under the codified law, we cannot afford to prevent the use of the hundis so long as we are not in a position to have an efficient Bank in each village. As things are, we cannot prevent the operation of the indigenous system without causing a serious dislocation of our trade and commerce.”³

24. Subsequent to the consideration bestowed by the Law Commission of India, the organised banking system in our country has no

¹Report of the Banking Commission (Government of India) (1972), paragraph 18-101.

²Eleventh Report of the Law Commission of India (Government of India) 1958, paragraphs 15 and 16.

³Eleventh Report of the Law Commission of India (Government of India), 1958 paragraph 13.

doubt taken great strides. Following the nationalisation of the Imperial Bank of India and the taking over of the 14 major Indian commercial banks of our country and the accentuated emphasis on the purveying of rural credit by commercial banks and the several steps taken for the spread of banks' branches in rural areas, it may be said no doubt that there has been a substantial coverage of the rural landscape of our country by the organised banking system. It is in this context the Banking Commission's Study Group which reviewed legislation affecting banking has posed for consideration (as pointed out in paragraph 5 supra) the question of the continuance of the hundi system when there is a massive spread of our organised banking system.

25. The views offered in response to the said questionnaire are not doubt divided. But the question is substantially covered by the assessment made by the Banking Commission that the commercial banks may not be able to displace the indigenous bankers nor is such displacement necessary and that both the organised system and the indigenous system could work in conformity as useful adjuncts under an overall credit policy.

HUNDIS ARE USED FOR SETTLING COMMERCIAL DUES

26. Apart from the above, it is a fact that hundis are now employed mainly by those engaged in the business of lending or otherwise extending finance to the small business people and others. In fact, *hundis today are the real indigenous bills of exchange evidencing bonafide commercial and trade transactions*. In view of the long and established traditions of the system, merchants and traders have been using hundis as the normal medium for settlement of commercial transactions. The hundi is also issued by one trader on another who may not be doing any *sharafi business*. Thus, the utility of the hundi system for the merchants and traders does not merely rest on the fact that the indigenous bankers extend credit through the medium of hundis, but also on this, namely, that merchants and traders employ this medium as an effective method for settling commercial transactions and recovering commercial dues. Thus, *the hundi system is serving the mercantile community in general and hence its utility cannot be considered only with reference to its being employed by indigenous bankers*.

USEFULNESS OF BILTI HUNDIS (I.E., DOCUMENTARY HUNDIS)

27. In our Report on Negotiable Instruments Law, we have referred to the usefulness of the documentary hundis which are called bilti hundis. In the course of a Survey on Cheques and Bills¹ which

¹For the Report on the Survey, please see Appendix VI to the Report on Negotiable Instruments Law (1975) of the Banking Laws Committee (Government of India).

we had conducted in collaboration with the National Institute of Bank Management, we had also tried to collect data with reference to hundis. Paragraphs 17 and 18 (given below) of this Survey Report reveal the findings of the survey with reference to bilti hundis, shahjog hundis and other types of hundis :

“BILTI HUNDIS

17. During the examination of the several types of inland documentary negotiable instruments with the banks, a number of bilti hundis (indigenous negotiable instruments with documents) were also noticed. Such hundis were pending for collection or payment with the branches of the banks on the dates of the visits.

SHAHJOG AND OTHER TYPES OF HUNDIS

18. The visits to the branches also revealed that quite a number of indigenous negotiable instruments (hundis), in various types were coming into the banking system for the purpose of collection. Of the several types of hundis noticed, the Shahjog hundis were greater in number. Dekhandar hundis and Namjog hundis were also noticed.”

As regards bilti hundis, we had observed then that :

“*bilti hundis* (hundis with documents) are a class of indigenous negotiable instruments, which bear on their face the reference to the document of title to goods and it is a *condition* of their payment by the drawee that the documents should be validly transferred and delivered by the holder to the drawee... Bilti hundis seem to have some merit. They evidence transactions relating to trade and commerce and provide an inbuilt device to ensure that an agency refinancing the transactions covered by such hundis is able to satisfy itself that the transactions refinanced are essentially towards the repayment of bills arising in the course of *bona fide* commercial and trade transactions. Having regard to the aim of the *New Bill Market Scheme* which the Reserve Bank of India has promoted and the objectives of credit policy, it may not be desirable to do away with bilti hundis.”⁴

28 In fact, in our Report on Negotiable Instruments Law we have suggested that our law relating to bills of exchange may usefully borrow from the usage applicable with reference to bilti hundis. In this view, we have recommended an amendment to section 5 of the NIA

⁴Report on Negotiable Instruments Law (1975) of the Banking Laws Committee (Government of India), paragraphs 3.12 and 3.14.

so that documentary bills may be given adequate recognition under the scheme of the NIA.¹

ROLE OF SHARAFI AND ALLIED ASSOCIATIONS IN SETTLING DISPUTES

29. Another valid point which requires mention at this stage is with reference to the advantage to the hundi system, namely, that it has the services of the "associations" for reconciling and deciding disputes with reference to hundis. This aspect has been emphasised by the Chairman of this Committee in the key-note address² delivered by him at the Fourth All-India Shroffs Conference held on 10th September 1976 and in the paper³ prepared by the Secretary to the Committee and circulated at the above Conference. As pointed out in the address of the Committee's Chairman, the sharafi and allied associations have been playing a leading role in the settlement of disputes relating to hundis and this has been a feature of all the leading associations not only noticed now by this Committee but has also been recognised from times of yore. L.C. Jain has referred to this as a time-honoured custom. Referring to these associations he says :

"These guilds are of ancient origin. Though a great portion of their activities are concerned with various religious and social matters affecting their members, they also settle trade disputes and often function as insolvency courts. Their constitution is quite simple....Decisions are arrived at on democratic principles....."

The Associations have another field of useful activity, in which they are daily engaged. From day to day, they dispose of many disputes among their members, who would otherwise have recourse to the law courts....They have printed forms, on which the points of difference are noted down, together with the names of the parties at variance. The Secretary of the Association then investigates the matter and writes down his award, which is usually accepted by both parties. In the event of their taking the case into court, which rarely happens, there is little chance of obtaining a reversal of the award, for it is arrived at after careful scrutiny, as a result of personal knowledge and inquiry."⁴

Thus, L. C. Jain, in his doctoral thesis published in 1929, had found clear evidence of the arbitral role played by the associations. This

¹*ibid*, paragraph 3-14 read with paragraph 3.20.

²*vide* Annexure 5 to this Report.

³*vide* Annexure 6 to this Report.

⁴L. C. Jain, *Indigenous Banking in India*, (1929), pages 39-42.

fact reveals that the dispute settling role of the sharafi and allied associations is certainly a unique feature of the hundi system.

30. This Committee has also gathered further evidence on the current functions undertaken by the associations as part of their *dispute settling role* with reference to hundi transactions. As pointed out in the paper prepared by the Secretary to the Committee and circulated at the Fourth All-India Shroffs Conference,

“the reports of different associations do indicate that small businessmen, retailers and traders who employ hundis derive real benefit from the sharafi associations in settling their disputes with reference to hundis. While the role played by sharafi associations in Bombay in this regard is fairly well-known, I may refer to an association in Calcutta which, during the year 1973 alone seems to have received as many as 6,868 cases for settlement and that out of them, most of the cases seem to have been amicably settled through the intervention of the Hundi Sub-Committee of the Chamber. The custom of the land has sanctified this practice and the courts of the country have generally respected the decisions of these Chambers.”

ADVANTAGES OF HUNDI SYSTEM

31. Then, there are one or two other aspects which we would like to refer to at this stage while dealing with the general utility of the system in the context of the question whether or not the hundi system should be continued. The associations which are playing such a useful role with reference to hundis have rightly pointed out before us the further advantages of the system, namely, (1) the quickness and (2) the inexpensiveness of the hundi transactions. They have also pointed out that in the methods adopted for drawing a hundi there are in-built safeguards which substantially eliminate the scope for frauds and forgeries with reference to hundis. The Study Group on Indigenous Bankers has mentioned this aspect and several other persons with specialised knowledge in hundi transactions have also spoken to us on this. In view of all these merits in the system, the associations have been pleading for a proper recognition of the role of the hundi system. Evidently, such proper recognition is feasible only on the codification of the practices and usage relating to hundis.

GENERAL AND LOCAL USAGES RE. HUNDIS

32. While some usages relating to hundis may be commonly recognised throughout the country, some other usages may have been established only in a particular locality or with a particular class of indigenous bankers and such usages may be termed as “local” usages. Such local usages may, therefore, vary from place to place and from one class of indigenous bankers to the other.

33. However, hundis have long been in usage, even prior to the enactment of the NIA, and they are serving useful purpose among the mercantile community. Hence, the suggestion to discontinue the use of hundis, whether suddenly or after a stipulated period of time, may not be well received by the business community at large.

34. The case for the removal of some of the constraints now operating on the working of the system, such as the application of section 40A(3) of the Income-tax Act, 1961, to hundi transactions, could be strengthened only after such codification. In fact, in spite of its merits, the features of the system are not well-known. The bankers and members of the mercantile community who are not habituated to the use of these instruments do not understand fully the implications of the instruments, the ambit of the terms and conditions subject to which they are issued, the rights and liabilities of parties on the transfer or negotiation of the hundis and the remedies available to the holders in the event of dishonour. It is in view of the features of the system remaining as a matter of specialised knowledge to those members of a community who are now aware of the incidents thereof, the spread of the hundi system in our country has not been successful to the extent it could have been, had the efforts towards codification been met with success earlier.

CODIFICATION IS THE SOLUTION

35. While the hundi system has its salient points, it does not mean that the hundi rules could be codified without an examination. Over the course of years, some divergences have developed in the rules and practices applicable to hundis drawn in different areas in local languages with characteristics peculiar to themselves. Some types of hundis have been in circulation mainly in certain parts of the country. Some forms have been popular only at certain periods of time. Again, persons familiar with the business practices relating to hundis in one area of the country have been by and large not so familiar with the various practices applicable to hundis circulating in other areas.

36. But the basic characteristics and the essential features of the different types of hundis current in our country and the main business practices with reference to them have been, by and large, not diametrically varying and if they differ, the difference has not been of substance but only of degree. If the divergences are not to become very marked, if clarity is to be maintained with reference to the usage relating to hundis and if a greater understanding and awareness of the hundi business is to be developed in official quarters, then this can be done only by means of codification.

SUMMING UP

37. The Law Commission of India recognised that hundis and the shroffs who finance commercial transactions through hundis do a very useful service over the larger part of the country, particularly in the villages where the modern banking system has not so far been extended. As pointed out by the Banking Commission (1972), although the commercial banks are expected to give much greater attention to satisfy the needs of small borrowers of various types than in the past, it is unlikely that they will be able to displace the indigenous bankers altogether; nor is such displacement essential. Hence, the necessity for codifying the practices and usages relating to hundis has been emphasised by the Banking Commission and its Study Group on Indigenous Bankers.

38. As pointed out by the Banking Commission's Study Group on Indigenous Bankers, hundi performs one or other of the three functions, namely, it is used to (1) raise money, (2) remit funds and (3) finance inland trade; since hundi performs one or other of these essential functions, it has been used throughout the country for generations and its popularity has not significantly waned.

39. One of the great attractions of the hundi is the low cost of litigation and swift justice available through the intermediation of the associations concerned with the settlement of hundi disputes.

40. Hundis are today the real indigenous bills of exchange evidencing *bona fide* commercial and trade transactions. In view of the long and established traditions of the system, merchants and traders have been using hundis as the normal medium for the settlement of commercial transactions. The hundi is also issued by one trader on another who may not be doing any sharafi or financing business. The hundi system has served the mercantile community in general and hence its utility cannot be considered only with reference to its being employed by indigenous bankers.

41. All the various types of hundis which were in vogue earlier are not now current. By and large, many of them have fallen into disuse. Hence, the efforts for codification need be confined only to such types of hundis which are now current in the different parts of the country.

42. Codification of the hundi rules is the only solution for the systematic growth and preservation of the hundi system. As pointed out by the Banking Commission's Study Group on Indigenous Bankers, while considering the codification of the usages and incidents applicable to the different types of hundis we have to consider which of them could be given legal recognition and which are beyond the pale of legal sanction. Codification of the hundi rules and usages is also necessary to facilitate the removal of the constraints on the working of the system, e.g., that arising under section 40A(3) of the Income-tax Act, 1961.

43. Of the hundis in vogue, bilti hundis require special mention as pointed out in paragraphs 3.12 and 3.14 of our Report on Negotiable Instruments Law.¹ Having regard to the aim of the New Bill Market Scheme which the Reserve Bank of India has promoted and the objectives of credit policy, bilti hundis merit encouragement. They should also qualify as eligible paper under the New Bill Market Scheme.

44. The dispute settling role of the associations connected with hundi transactions merits special mention. The reports of the different associations reveal that small businessmen, retailers and traders employing hundis derive real benefit from the associations in settling their disputes with reference to hundis.

45. The associations which are playing such a role with reference to hundis have rightly pointed out before us the further advantages of the system, namely, the quickness and the inexpensiveness of the hundi transactions. They have also pointed out that in the methods adopted for drawing hundis there are inbuilt safeguards which substantially eliminate the scope for frauds and forgeries with reference to hundis.

46. The necessity for codification may be appreciated when we consider that it would facilitate the removal of some of the constraints under which the hundi system is now working. In spite of its merits, the features of the system are not well known. The bankers and members of the mercantile community who are not familiar with the use of these instruments do not understand fully the implications of the instruments the ambit of the terms and conditions subject to which they are issued, the rights and liabilities of parties on the transfer or negotiation of the hundis and the remedies available to the holders in the event of their dishonour. It is in view of the features of the system remaining as a matter of specialised knowledge of the members of certain communities, the spread of the hundi system in our country has not been successful to the extent it would have been had the earlier efforts towards codification met with success.

47. While the hundi system has its salient points, it does not mean that the hundi rules could be codified without an examination. Over the course of years some divergencies have developed in the rules and practices applicable to hundis drawn in different areas in local languages with characteristics peculiar to themselves. Some types of hundis have been in circulation mainly in certain parts of the country. Some forms have been popular only at certain periods of time. Again persons familiar with the business practices relating to hundis in one area of the country have been by and large not so familiar with the various practices applicable to hundis circulating in other areas.

¹Report on Negotiable Instruments Law (1975) of the Banking Laws Committee (Government of India), pages 30—31.

48. But the basic characteristics and the essential feature of the different types of hundis current in our country and the main business practices with reference to them have been same or similar, and there have not been many substantial differences. If the divergences are not to become very marked, if clarity is to be maintained with reference to the usages relating to hundis and if a greater understanding and awareness of the hundi business is to be developed in official quarters, then this can be done only by means of codification.

CHAPTER 4

PROGRESS IN THE WORK OF THE CODIFICATION

While dealing with the subject of codification of the practices and usages relating to indigenous negotiable instruments (hundis), we realised the magnitude of the work and the necessity, for the fruitful completion of this task, to have the co-operation of the associations of merchants and traders which are playing an important role in the settlement of hundi transactions. It was also necessary to associate such representative bodies from all the zones of our country so that the different associations concerned with hundis may discuss with the Committee and, *inter se* the points where certain differences in the practices relating to hundis require reconciliation and so that in the areas which are now not clearly brought out under the existing body of rules and usages governing hundis there could be precise enunciation for the success of the efforts towards codification.

CODIFICATION WITH THE CO-OPERATION OF MERCANTILE BODIES

2. The realisation that the earlier efforts in our country towards such codification have not been fruitful, made us all the more conscious of the necessity for ensuring the cooperation and enlisting the collaboration of the merchant and trade bodies concerned with hundi transactions. In this effort we have been fortunate to have met with success. This is also partly due to the recognition by the concerned associations that for the removal of the constraints now operating in the working of the hundi system and for the strengthening and spread of its beneficial aspects, codification is the only solution. It was also realised by them that codification would provide the solid base on which the edifice of the hundi structure may derive enduring support. The associations were also aware that the success of the efforts for the codification of the hundi rules would provide an effective answer to those who were advocating the discontinuance or the abolition of the hundi system, *inter alia*, in view of what they considered as the "bewildering usages" prevalent in the system.

ABSENCE OF CODIFICATION ACCENTUATES DIFFERENCES

3. The fact that the hundi system in our country is time-honoured traditional and indigenous and hence the small merchants and traders are able to avail themselves of the benefits of the system without any special knowledge or study had been and continues to be the principal cause for the survival of the system over the past several decades, though

it had undergone a series of vicissitudes. At the same time, this has also contributed to the development of certain differences in the practices relating to hundis in the different zones of our country.

4. For instance, while the *shahi* hundi is regarded in Bombay as requiring payment only to a person recognised in the market as of substance and worth, in the Calcutta region the expression "shah" is regarded only as a term used in a glorific sense, such as "Shri" or "Shriman". Again, while there is a practice both in the eastern and western zones of our country for keeping a *darshani* hundi "khadi" (pending) for a certain number of days after its presentment for payment without the same being treated as dishonoured, ordinarily hundis are paid in the eastern zone (if payment is made by cash) the day subsequent to the day of presentment for payment and in the western zone hundis are usually paid on the same day. Thus, apart from matters of detail like working hours, holidays, etc., in certain other matters also we are confronted with differences in the different parts of our country.

NATURE OF OUR APPROACH

5. Our efforts have been to bring together the representative bodies of the different zones of our country and try to ascertain first the differences in the usages and then to develop a dialogue with all concerned associations to reconcile these differences in a way that would substantially be acceptable to the several sections of the mercantile community using hundis as medium for the settlement of commercial transactions.

AN ASPECT FAVOURABLE TO CODIFICATION

6. In one sense, the work of codification of the rules and practices relating to hundis is rendered less difficult. This is because of the *representative character* assumed by the different mercantile and trade bodies so that it becomes comparatively easy for the work of codification to proceed since the number of associations with which such discussions have to take place are not many, and they are easily known and recognised among the commercial community in the different parts of our country as the arbiters of disputes relating to hundis in the respective areas. Here again, the associations in the different zones of our country which now represent also other associations in matters relating to hundis are easily determined. In the result, in the work of codification, what is essentially required is the involvement of the several representative bodies of our country and their active participation in the project relating to codification of hundi rules.

STAGES IN THE PROGRESS OF THE CODIFICATION PROJECT

7. Now we shall refer to the several stages through which the work of codification had proceeded and the extent to which the cause of codification has been helped by passing through stages of work.

Stage 1

EFFORTS TO COLLECT PRELIMINARY DATA RELATING TO HUNDIS

8. The Committee first circulated copies of the questionnaire (prepared by the Banking Commission's Study Group which reviewed legislation affecting banking) referring to several aspects of hundi business. The views thereon of bankers, shroffs, merchants and trade bodies throughout the country were elicited. The Committee has also collected from several associations concerning hundis and others specimen forms of various types of hundis. The associations concerned with hundi transactions were also requested to give us copies of their rules and bye-laws.

SPECIMEN HUNDIS COLLECTED FROM DIFFERENT PARTS

9. The specimen forms of hundis collected from the different parts of our country have disclosed considerable information on the different types of hundis currently in vogue in the different parts of our country.

FORMS OF HUNDIS

10. The specimens of hundi forms reveal that generally the hundis are darshani hundis though we are given to understand that muddati hundis are also current.¹

BILTI HUNDIS (i.e., DOCUMENTARY HUNDIS)

11. There is a substantial volume of transactions covered by documentary hundis which are popularly known as Bilti hundis among the trading community dealing in hundis. With reference to Bilti hundis, in our Report on Negotiable Instruments Law we have stated that they merit encouragement and that they are genuine trade bills. In the context of the efforts made by the Reserve Bank to develop a genuine Bill Market in our country, it is necessary that the existing indigenous trade bills like Bilti hundis should be recognised as instruments eligible for rediscounting facilities from the Reserve Bank (through commercial banks). In this connection, we also invite reference to paragraphs 3.12 to 3.20 of our Report on Negotiable Instruments Law and paragraphs 27 & 28 of Chapter 3 of this Report.

STATES HAVING SIZEABLE HUNDI TRANSACTIONS

12. We have received the hundi specimens from various centres. Specimens of hundis have been received from several places in Andhra

¹As regards hundis employed by members of the Shikarpuri Shroffs Association as medium for their financing of commercial transactions, please see paragraph-5.13 of our Report on Negotiable Instruments Law wherein we have indicated that these hundis are now drawn in English and conform to the definition of bill of exchange or promissory note. Hence, with reference to Multani hundis it is only the provisions of the Negotiable Instruments Act 1881 and not any inconsistent usage or practice that may merit recognition.

Pradesh, Assam, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Uttar Pradesh and West Bengal. Several associations in Gujarat, Madhya Pradesh, Maharashtra and West Bengal have sent us the body of rules framed by them to regulate transactions in hundis. Special reference may also be made to the hundi issued by Baba Kali Kamli Wala Panchayat Kshetra, Rishikesh, which plays effectively the role of travellers' cheque; the pilgrims and other travellers going to the Himalayan centres of pilgrimage, like Rishikesh, Badrinath and Kedarnath, widely avail themselves of this facility from the Panchayat Kshetra.

13. From the States of Karnataka, Kerala and Tamil Nadu we have not received any hundi specimens. But on that account we cannot conclude that in these States there are no transactions in hundis. Hundis had been employed by the Chettiar community in the South on a wide scale. Whether there are still hundi transactions handled by the members of the Chettiar community on such a large scale is doubtful. The Study Group on Indigenous Bankers constituted by the Banking Commission has indicated that "the number of Chettiar firms doing hundi business in the entire South would not exceed 50"¹.

Stage 2

PRELIMINARY DISCUSSIONS WITH REPRESENTATIVE BODIES

14. On the basis of the data collected as above, an analysis of the different forms of hundis and the rules considered as applicable to them was made at the Secretariat level. On the basis of such studies, the Chairman and the Secretary of the Committee held several preliminary discussions with the representatives of several leading associations in our country concerned with hundis. These discussions pointed out the necessity for clarifying several aspects relating to the hundi system from banking, legal and commercial points of view.

Stage 3

ENGAGEMENT OF LEGAL EXPERTS BY THE BOMBAY ASSOCIATIONS TO COLLABORATE WITH THE COMMITTEE IN THIS WORK

15. On the basis of the preliminary discussions held, the Bombay associations felt the need for associating legal experts to give more precise and formal shape to their proposals for codification. The Bombay Shroffs Association, being the leading sharafi association, engaged for this purpose the services of Shri N. A. Mody, former Acting Chief Justice of the Bombay High Court. Shri Mody also had a number of discussions with the Chairman and the Secretary of the Committee

¹Report of the Study Group on Indigenous Bankers (Banking Commission, Government of India) (1971), paragraph II, 71.

while proceeding with his work. The representative associations, particularly those in Maharashtra and Gujarat, also held several discussions with their counsel and the Committee so that the legal issue meriting further examination and consideration by the Committee could be sorted out.

Stage 4

JOINT SHARAFI CONFERENCE

16 The associations in Bombay concerned mainly with hundi business took up for consideration the several practices and usages with reference to the working of the hundi system. The Committee's efforts towards codification had spurred this activity. The sharafi associations in Bombay (other than the associations of the Multani bankers) constituted the Joint Sharafi Conference with the Bombay Shroffs Association acting as their leader. In proceeding with its work, this Joint Sharafi Conference, Bombay, wanted several clarifications for more precise formulation of the rules and usages relating to hundis. For this purpose, a series of meetings were held between the active members of the Joint Sharafi Conference, Bombay, and the Secretary and other officials of the Committee.

ALL-INDIA PROJECTION TO THE PROPOSALS

17 At this stage the necessity was also felt for bringing together other associations in the country concerned with hundi business so that proposals for codification could be projected on an all-India plane. For this purpose, the necessity for convening an all-India conference of the concerned associations and placing before such conference concrete proposals for codification was conceived.

Stage 5

PROPOSALS FOR A HUNDIS ACT

18. With the assistance of Justice Shri N.A.Mody and in the light of the discussions with the Chairman and the Secretary of the Committee, the Joint Sharafi Conference, Bombay, prepared a model draft of Hundis Act, so that these proposals could be discussed with all representative associations and the Committee. The Fourth All-India Shroffs Conference was convened by this body (i.e., the Joint Sharafi Conference, Bombay) in September 1976.

Stage 6

ALL-INDIA SHROFFS CONFERENCE

19. The Fourth All-India Shroffs Conference held in Bombay in September 1976 was inaugurated by Shri M.V.Arunachalam who was the then President of the Federation of Indian Chambers of Commerce

and Industry, and was presided over by Shri Y. J. Mohite, the then Finance Minister of the Government of Maharashtra. The Chairman of the Committee delivered the key-note address at the Conference. At this Conference several papers of considerable interest to the hundi system were circulated; they provide useful information on the working of the hundi system. The address delivered by the Chairman of the Committee and the paper contributed by the Secretary to the Committee are annexed to this Report.

20. The main subject for discussion at the All-India Conference was to consider the proposals placed before the Conference in the form of a "Draft Hundis Act". There was general support for the basic features of the proposals, but the need for careful examination of the several provisions and the necessity to reconcile some of the practices and usages relating to hundis prevalent in different parts of our country, particularly as regards the practices prevailing in the western zone with those in the eastern zone, were emphasised during this Conference.

ALL-INDIA REPRESENTATIVE BODY CONCEIVED

21. For proceeding further, it was decided at this Conference to constitute an All-India apex body, which would represent all the associations concerned with hundi business, to take up with the Committee on the one hand and the several associations on the other the several issues considered at this Conference. Though there was a decision to constitute an All-India apex body, the efforts for the formation of such a body are evidently still continuing as the body is yet to take a formal shape. We recommend that the several representative bodies concerned with hundi business may be encouraged by the Government of India and the Reserve Bank to come together to form such an apex body, the necessity for which they themselves have already realised. Such an All-India body could effectively contribute for the development of hundi business and for the preservation and strengthening of the role of the associations in the smooth and efficient functioning of the hundi system.

Stage 7

SUBSEQUENT DISCUSSIONS WITH REPRESENTATIVE ASSOCIATIONS

22. The representative associations in our country subsequently met the Chairman of the Committee in Bombay on 11th September 1976, when it was agreed to identify the several points to be sorted out. With the assistance of Counsel Shri N. A. Mody and experts conversant with hundi practices, it was planned to hold with the Chairman and the Secretary of the Committee discussions on the "Draft Hundis Act" clause by clause in the effort to codify, clarify and reconcile the different usages relating to hundis.

CIRCULATION OF BOMBAY DRAFT HUNDIS ACT

23. In the meantime the Committee circulated the "Draft Hundis Act" prepared by the Joint Sharafi Conference, Bombay, to the other associations concerned with hundi business and called for their comments thereon. The representative associations of the eastern zone came forward with a number of suggestions indicating the aspects with reference to which the proposals which emanated from the Joint Sharafi Conference, Bombay, would require modification.

REPRESENTATIVE ASSOCIATIONS IN THE EASTERN ZONE

24. In the eastern zone of our country, Calcutta is the leading centre wherein most of the hundis drawn in upcountry centres come for payment. Of the chambers and merchant bodies functioning in Calcutta and concerned with hundi transactions, a prominent role is played by the Merchants' Chamber of Commerce, Calcutta. This Chamber has got a Hundi Sub-Committee which attends to the settlement of hundi disputes. On behalf of the representative associations in the eastern zone of our country, the Merchants' Chamber of Commerce, Calcutta, has taken the leading role in studying the Draft Hundis Act proposed by the Joint Sharafi Conference of Bombay.

VIEWS OF THE MERCHANTS' CHAMBER OF COMMERCE, CALCUTTA

25. The Merchants' Chamber of Commerce, Calcutta, which plays decisive role in the settlement of hundi transactions and which has an active Hundi Sub-Committee to consider all matters relating to hundis, wrote to us, as under, in February 1977 with reference to the Bombay Draft :

"We have gone through the proposed Hundi Act as prepared by the Bombay Shroff's Association. From a reading of the Draft it appears that the said Association has not taken into account the fact that apart from Sarafs or Shroffs, many people engaged in trade and industry also take recourse to hundis in course of their business transactions. This is the most prevalent practice in almost all parts of the country, particularly in places where traders have to purchase agricultural produce and also amongst traders working places where sufficient banking facilities are not available.

As a result in the proposed Hundi Act submitted by the Bombay Shroff's Association, the cases of such businessmen do not seem to have been taken into consideration, and perhaps that is why in every place it has been confined to the professional Sarafs or Shroffs who are mainly engaged in the business of Hundi alone.

Needless to say any Act intending to regulate the Hundi transactions must take into account the entire working of Hundis in the country as well, viz. Hundis which are being used as instruments of payment by the trading community, as explained above.

as also Hundis which are being used as instruments of payment by professionals like Sarafs or Shroffs. There may be recognised associations of such Shroffs and Sarafs here and there, but it will not be possible nor feasible also for each and every businessman to be a member of such a recognised association in every part of the country in order that he may take recourse to hundi as a means of business transaction. Neither it will be possible to establish recognised associations in the remotest corners of the country save and except the metropolitian cities, towns and district headquarters."

MEMORANDUM OF THE MERCHANTS' CHAMBER TO THE UNION FINANCE MINISTER

26. Subsequently, the Secretary of the Merchants' Chamber of Commerce, Calcutta, wrote as under on 28th March 1977 to the Hon'ble Shri H. M. Patel, Union Minister for Finance (with copy to the Committee) :

"I would like to draw your kind attention to the question of codification of Hundi Rules which is under consideration of the Government with a view to eliminating any scope of confusion and complication in regard to Hundi transactions which is so very a popular in our country.

There is still a great need for continuance of hundi transactions inasmuch as banking institutions will yet take a long time to reach the distant corners of the country and pending that, hundi is the only means of monetary transactions to maintain trade deals in such unbanked areas. It is, therefore, in the fitness of things that the Government should come forward to stream line the hundi transactions to make it more popular and methodical.

In this connection, it is however, learnt that Bombay Shroffs' Association has already (prepared) a draft of the hundi bill for consideration of the government. A copy of the said draft has also been received in our Chamber. From a scrutiny of the same, it appears that in framing the bill, the actual state of affairs prevailing in the different regions of the country with regard to hundi transactions have not been taken into consideration. The draft bill proposes to restrict hundi transactions amongst the members of Sarafi or Shroffs Association. This may be appropriate so far as the Western region is concerned. But in the Eastern region, hundi transactions are resorted to by people who do not belong to any such association and, as a matter of fact, it is not also practical inasmuch as such hundi transactions are essentially necessary and indispensable in respect of transactions in the remote areas

where no such associations exist. It is not also possible for such parties to be associated with the hundi associations, if there be any, functioning in the urban areas.

It may please be noted that if the hundi rules are codified in the form as it is suggested in the draft bill, it will be very much damaging to the cause of trade and industry in most of the regions of the country, and as such, the Committee of my Chamber feel that the matter should be handled with extreme caution and care.

The Committee of my Chamber, therefore, feel that the draft of the hundi bill (prepared) by the Bombay Shroffs' Association, needs through redrafting."

NEED FOR FURTHER DISCUSSIONS WITH THE REPRESENTATIVE BODIES

27. Evidently the associations in the eastern zone of our country concerned with hundi transactions were not satisfied with the Draft Hundis Act as proposed by the Joint Sharafi Conference, Bombay. Again, in many respects the provisions of the Bombay draft required appropriate changes to avoid hardships in the working of the hundi system. It is in this context, the necessity was felt for further discussions with the representative bodies in the different zones under the auspices of the Committee in order to reconcile the differences in their approach and facilitate the work of codification. The Merchants' Chamber of Commerce, Calcutta, also appreciated the necessity for such discussions and it invited in June 1977 the representatives of the Bombay Shroffs Association and the Secretary to the Committee for discussions on the proposals relating to the codification of hundi rules.

JOINT DISCUSSIONS

28. On 9th and 10th August 1977 the representatives of the Merchants' Chamber of Commerce and other associations in the eastern zone had a joint meeting at Calcutta with the Secretary to the Committee and the representatives of the associations in the western zone. Then it was agreed that the proposals for codification as submitted by the Joint Sharafi Conference, Bombay, may be gone into again with a view to accommodate in the Draft all points of view and to make the hundi a more effective instrument acceptable to all shroffs and merchants. Then it was realised that the draft proposals required to be further studied to eliminate any hardships in the working of the system. It was also realised by all the representatives that the main advantage of the hundi system, which lies in the role of the association to settle expeditiously and effectively disputes relating to hundis, should be preserved and strengthened. On the draft proposals as a whole, the representatives agreed to have a constructive dialogue under the aegis of the Committee with a view to arrive at solutions which would be satisfactory to all interests.

Stage 8

EASTERN ZONE ASSOCIATIONS' PROPOSALS FOR CODIFICATION

29. The Merchants' Chamber of Commerce, Calcutta, which is the leading association dealing with hundi transactions in the eastern zone of our country undertook the exercise of going through the proposals contained in the original draft prepared by the Joint Sharafi Conference, Bombay, and studying the same with reference to the practices and usages relating to hundis prevailing in the eastern zone. Several meetings were held between the representatives of the Merchants' Chamber and the Secretary to the Committee. The Merchants' Chamber was able to get, in this work, assistance of a very high calibre from advocate, Shri S. S. Saraf. As a result of this, the Merchants' Chamber prepared a tentative draft which was intended to serve as the basis for further discussion with the representatives of the western zone associations. This draft was made available to the Committee and the western zone representatives by the end of December 1977.

ATTEMPT AT RECONCILIATION OF THE TWO DRAFTS

30. During January to end of May 1978, the secretariat of the Committee considered both the drafts and raised several points with a view to avoid ambiguities and help in the assimilation of the proposals, so that there could be one draft of the proposals which may be considered as meriting condification. These points were discussed at a number of meetings separately with the representatives of the western zone associations and those of the eastern zone associations.

COMMON DRAFT FIRST VERSION

31. On the 3rd and 4th June 1978, the representatives of the western zone and eastern zone associations met at Bombay under the aegis of the Committee and after intensive discussions, agreed on a provisional draft of the proposals for legislation. While the discussions at this stage revealed the basic identity of the important usages relating to hundis prevalent throughout the country, some particular points on which reconciliation was considered necessary with reference to the prevailing usages in both the zones of our country were reserved for further consideration.

COMMENTS OF THE JOINT SHARAFI CONFERENCE ON THE PROVISIONAL DRAFT

32. The Joint Sharafi Conference, Bombay, considered the draft again and the Convener of the Conference submitted a note and wrote to the Merchants' Chamber of Commerce, Calcutta, and to the Committee, indicating the aspects on which, according to the Conference, the provisional draft may require further changes.

33. In the said note the Joint Sharafi Conference had drawn attention to some points like—

- (i) the necessity for excluding from the Hundi Code transactions of the promissory note type (with reference to which the provisions like section 69D of the Income-tax Act, 1961, may be applicable),
- (ii) the need for clarifying that hundis shall not be liable to stamp duty,
- (iii) the necessity for making adequate provisions in the Code for the recognition of the khadi system prevalent with reference to hundis,
- (iv) the necessity for giving adequate recognition, in the proposals for a statutory scheme, for the rules and usages relating to shahjog hundis as prevalent in the western zone,
- (v) the desirability of necessary clauses for protection with reference to hundis on the lines available to the paying banker and the collecting banker under the NIA,
- (vi) the need to clarify that associations could adopt a simple and flexible procedure with reference to reconciliation of hundi disputes,
- (vii) to make the rule clear that the payment of a hundi should ordinarily be by cash, in order to preserve the independence of the hundi system,
- (viii) to consider the standardisation of the rate of nakrai shikarai for the whole country by an adequate provision in the proposed statute,
- (ix) to confer on the association the power to decide the rate at which interest is payable for the period a hundi is kept khadi, the rate at which it is payable after obtaining praman patra, etc., and
- (x) to give statutory recognition to the concept of a stale hundi.

SHROFFS' CONFERENCE AT NADIAD

34. On the 20th August 1978 at Nadiad in Gujarat State, the Kaira District Shroffs Association convened a conference of shroffs in which the proposals for codification of hundi rules were also discussed. This conference was addressed by the Secretary to the Committee and by Prof. Thomas A. Timberg of the World Bank; it was attended *inter alia* by the representatives of sharafi associations in Ahmedabad, Baroda, Anand and leading shroffs from Bombay. The discussions at the conference helped in an assessment of the important role played by indigenous bankers (shroffs) in the rural parts of our country.

DISCUSSIONS WITH REPRESENTATIVES OF EASTERN ZONE ASSOCIATIONS

35. On the specific points raised by the Joint Sharafi Conference, Bombay, the Secretary to the Committee had discussions with the representatives of the eastern zone associations on the 22nd and 23rd August 1978 at Calcutta. During these discussions, the points on which there could be agreement and the points on which the scheme could allow the preservation of the practices in both the zones were fully gone into.

Stage 9

DISCUSSIONS WITH THE FICCI COMMITTEE

36. On the 29th August 1978 the Secretary to the Committee and the representatives from both the western and eastern zones met the members of the Internal Trade Committee of the Federation of Indian Chambers of Commerce and Industry (FICCI) at Kanpur, when the general features of the proposals for codification were discussed. The FICCI had earlier indicated to us its interest in the proposals for codification. The discussions at Kanpur were intended to ascertain the existence of a consensus as regards hundi practices and usages in the different parts of the country.

FINAL ROUND OF DISCUSSIONS AT CALCUTTA

37. The representatives of the eastern and western zones and the Chairman of the Internal Trade Committee of the FICCI had a final round of discussions at Calcutta on the 9th and 10th September 1978 with the Secretary to the Committee, when the several provisions contained in the draft proposals were discussed clause -by- clause and finalised. At these discussions the representatives of the Ahmedabad Shroffs Association and the Kaira District Shroffs Association were also present and they actively participated.

CONSENSUS ON ALL PROPOSALS EXCEPT RE. SHAHJOG HUNDIS

38. During the above meeting at Calcutta there was agreement on all the provisions as regards the proposals for codification, except with reference to the treatment to be given to the shahjog hundis and the practices relating thereto as understood in the western zone. However, it was agreed at this meeting that since the special features of the shahjog hundis (which are conspicuous by their absence in the eastern zone) are essentially matters of concern to those having hundi transactions in the western zone, the provisions relating thereto could be finalised later during the discussions with the representative associations in the western zone.

39. However, it was agreed at the above meeting that the provisions have to be so drawn up as not to create any difficulty with reference to the position prevailing in the eastern zone where the expression "shah"

in a hundi is regarded as merely of an honorific significance and not conveying anything special.

CONCEPT OF CROSSED SHAHJOG HUNDI

40. Provisionally it was considered at the above meeting that a shahjog hundi may be attributed with the special features now prevailing in the western zone with reference to such hundis provided the shahjog hundi bears on its face two transverse parallel lines authenticated by the drawer. This was considered as the practical method by which the shahjog features as prevalent in the western zone may be protected without creating any disturbance as regards the rules applicable with reference to hundis in the eastern zone where the expression "Shahjog" is invariably found mentioned but without intending to convey thereby that the hundi is to be paid only through a "shah" or that the "shah" receiving payment has to undertake certain specific responsibilities as is the position in the western zone.

PAYMENT OF CROSSED SHAHJOG HUNDI THROUGH SHROFF

41. It was also discussed at this stage that such a crossed shahjog hundi may be required to be paid through a "shroff". For this purpose it was suggested that the expression "shroff" may be defined as under:

" 'saraf' or 'shroff' means a person whose principal business is to accept deposits and advance loans and in the course of such business he draws, accepts and/or honours hundis".

It was also suggested at this Calcutta meeting that with reference to a shahjog hundi which may be required to be paid through a shroff, the protection to the shroff may be given on the lines of the protection now available under the NIA to a paying banker and a collecting banker. On these proposals relating to shahjog hundis, the Convener of the Joint Sharafi Conference, Bombay, wanted to consult other representatives also at Bombay before finalising their reaction to these proposals.

DISCUSSIONS AMONG REPRESENTATIVES OF WESTERN ZONE ASSOCIATION RE. SHAHJOG HUNDIS

42. The representatives of the western zone associations have subsequently discussed amongst themselves the provisions necessary to preserve the features of the shahjog hundi. On this aspect there has not been a complete unanimity between the concerned representative bodies. While the Bombay Shroffs Association and the other associations comprised in the Joint Sharafi Conference, namely, the Hindustan Chamber of Commerce, Bombay, the Grain, Rice and Oilseeds Merchants' Association, Bombay, the Bharat Merchants' Chamber, Bombay, and the Western India Chamber of Commerce Ltd., Bombay, have indicated to us that it is not necessary to define a "shroff" to preserve the features of the shahjog hundi and that instead a "shah" may be

defined and the shahjog hundi (which should be crossed by the drawer) may be required to be paid only to a shah. For this purpose, these associations have pointed out that as per the general understanding (which has also been recognised judicially) "shah" should be defined as a "responsible and respectable person of worth, substance and credit on whose responsibility the amount of the shahjog hundi can be paid". These associations have also not pressed the question of special protection clauses on the lines of the provisions now fund under the NIA to a paying banker and a collecting banker with reference to a (crossed) shahjog hundi that may be required to be paid to a "shah".

43. On the other hand, the Ahmedabad Shroffs Association and the Gujarat Federation of Shroffs (a body which has recently come into the field and which represents the sharaifi associations in the Gujarat State) have requested us that as regards shahjog hundis, the provisions may be preserved on the lines suggested at the meeting held in Calcutta on the 9th September 1978, i.e., that a shahjog hundi (which is crossed) may be required to be paid through a shroff and that with reference to such shahjog hundies, shroffs may be given the protection similar to that now available under the NIA to the paying banker and the collecting banker. These associations have suggested to us that for the purposes of the statutory scheme, a "shroff" may be defined as under :

" 'saraf' or 'shroff' means a person whose principal business is to accept deposits and advance loans and in the course of such business who draws, accepts, and/or honours hundis and/or other negotiable instruments".

ATTEMPTS TO RECONCILE THE DIFFERENCES RE. SHAHJOG HUNDIS

44. We have discussed with the representatives of the associations concerned with hundi transactions in the western zone and have tried to reconcile their points. In the light of such discussions, a suggestion has been made that a crossed shahjog hundi may ordinarily be required to be paid to a shah and that if such a shahjog hundi is specially crossed as requiring payment through a shroff, then such a hundi may be required to be paid through a shroff who may be defined on the lines already set out and who may be given the protection now available to the paying banker and the collecting banker under the NIA. However, the representative bodies in Bombay could not agree to this suggestion.

Stage 10

AGREED DRAFT SPONSORED BY THE FICCI

45. In the light of the efforts made to codify the hundi rules and usages and the several discussions between the representative bodies, it was but fitting that the FICCI should sponsor the draft, on behalf of all sharaifi associations and merchants and trade bodies, with reference

to which basic agreement has been reached between all representative bodies who have come before us and who are concerned with hundis. On the 22nd September 1978, the President of the FICCI, Shri Pravin-chandra V. Gandhi, formally submitted to the Banking Laws Committee the proposals which are now in the form of a draft Bill (the "Hundi Code Act, 1978"). This is an agreed draft representing the views of all associations in our country concerned with hundi transactions and who have come before us, except as regards one point, namely, the treatment to be given and the provisions to be made with reference to shahjog hundis.

THE HUNDI CODE BILL

46. In the next Chapter we are considering the salient features of the Hundi Code Bill which we are recommending. As may be evident from the brief narration we have given regarding the several stages through which the work relating to codification had progressed, the proposals have the support of all the chambers of commerce and industry and other representative bodies concerned with hundi transactions. It has been our effort to ascertain the working of the practices in the day-to-day business rather than solely be guided by judicial decisions with reference to hundis rendered decades before. In other words, in our attempt at codification of the hundi rules and practices, we have tried to bring under one comprehensive and acceptable scheme the current rules and practices with reference to hundis. Considering the area that has been covered, it is really surprising, and we are happy about it, that only on one point (which is no doubt an important one) the concerned associations and other representative bodies are not in a position to agree. In the next Chapter we are dealing with this point also.

CHAPTER 5 HUNDI CODE

PART I

Though very much similar to negotiable instruments governed by the NIA, the hundi is a document *sui generis*. The firm link which the hundi has with the sharafi and merchants' associations (who are even now performing the role of the "merchant guilds" of medieval days) is the distinguishing feature of considerable substance and practical value which enhances the status of the hundi as against NIA paper. Over the course of years the trade bodies have played a regulatory role with reference to hundi transactions and it is necessary to preserve this. In several other aspects, just like the procedure for obtaining a penth or a per penth, the provisions relating to bilti hundis, nishaniwali hundis, shahjog hundis (as understood in the western region), the khadi system and in several other aspects, the hundi system stands unique compared to the provisions applicable to the NIA paper. Hence, any attempt at assimilation of the rules relating to hundis under the scheme of the NIA will only stultify the growth of the hundi system and reduce its importance. On the contrary, the development of a *Hundi Code* which may be comprehensive and which will also preserve the links which the hundis have with the "associations" will help in the development and strengthening of the hundi system on sound and healthy lines. This will also help in a better understanding of the indigenous banking system and its practices.

OTHER ADVANTAGES OF HUNDI CODIFICATION

2. Codification will also render great service to the merchants, traders and others in the different regions of our country, who over the course of years have inadvertently allowed certain differences to develop in the practices and usages with reference to hundis from region to region. Codification will help the indigenous banking community and the merchants and traders relying on the hundi system to plan their hundi portfolios and engage in hundi transactions in a much better way. The time that is now required by way of training for a person who is entering or working in a business enterprise having hundi transactions will be greatly reduced. Thus, codification is in the larger interest of the country will help commercial banks, government agencies and others to accept and handle hundis as often as they could and will help further the development of the indigenous banking and the business

community, which is relying on hundis for the settlement of their trade and commercial claims.

THE HUNDI CODE

3. In Part II of this Chapter we are giving the text of the Hundi Code which we are recommending. This draft version of the Hundi Code, as explained in Chapter 4, is the result of years of collaborative efforts with several sharafi associations and merchant bodies all over the country. This draft has already got the support of all the hundi associations who have come before us on all aspects except perhaps with reference to the treatment to be given to the shahjog hundis in the western zone of our country (with which we are dealing later in this Chapter).

4. In the first Part of this Chapter we are setting out in brief the main features of the Hundi Code which we are recommending. At the outset we may say that we are not discussing, nor does the Hundi Code give recognition to, the several obsolete forms of hundis and hundi transactions, though the textbook writers have given considerable space and attention to such forms of hundis and transactions. Even as regards the forms which will gain recognition under the proposed Hundi Code, we have set out only the practices and usages as are now applicable with reference to these forms of hundis. We have taken care to ensure that the draft of the proposals for the Hundi Code with reference to the forms of hundis provided for under the Code is acceptable to all those who have come before us and who have specialised knowledge of the current practices and usages relating to hundis in the different regions of the country. In order to save the space and conserve our efforts on this project, we are not setting out in detail in this Report how several forms of hundis which have now become obsolete ceased to be current. Nor with reference to hundis proposed to be recognised in the Hundi Code are we going into the earlier but now given up practices and how and why those practices happened to change.

5. It may be said at this juncture that most of the changes in the practices and usages relating to hundis have come about as a result of the genius of the mercantile community to adapt the business practices to suit the necessities of the situation. For instance, when section 40A(3) of the Income-tax Act, 1961, was introduced, the practice of requiring payment of hundis by cheques developed. In other words, this is a practice under which the rakhya or purchaser of a hundi is able to avail himself of the benefits of the hundi system and at the same time is in a position to ensure that his business expenditure represented by such payment is duly recognised by tax authorities. On the enactment of the Hundi Code, the representative bodies are hoping, and in our view justifiably, that the restraints now operating under the provisions of the Income-tax Act with reference to transactions covered by the Hundi

Code (this Code excludes from its scope purely money-lending transactions) will be removed by the Government of India.

MAIN FEATURES OF THE HUNDI CODE—GENERAL

SECTION I—DEFINITION OF HUNDI

6. The first point of importance for the framing of a Hundi Code relates to the definition of the "hundi". After considerable discussions with the representative bodies in the different regions of our country, we have found that the following definition is acceptable to all and may be adopted :

" 'hundi' means an instrument, in writing, which has more than two parties and which contains a statement that it is drawn subject to the bye-laws of the association mentioned in the instrument and which contains an order, signed by the drawer, directing the drawee to pay at sight or after the period specified therein, a specified sum of money only to or to the order of a certain person or himself or to the bearer of the instrument;

Explanation : where a hundi is drawn by a person at one place on himself at another place, the drawer and the drawee shall be considered as two parties for the purpose of this clause".

The definition would exclude "Multani hundis" from the scope of the Hundi Code. But, as already indicated in our Report on Negotiable Instruments Law (*vid.* paragraph 5.13 of that Report), the practice amongst "Multanis" is said to be to make their instruments in English and comply in form with the requirements of a "bill" or a "note", as required under the NIA; hence, such instruments are no longer "hundis". Even so, the definition clarifies that transactions of the promissory note type, which are purely in the nature of money-lending, will not come within the sweep of the Hundi Code. The other important feature of the "hundi" definition is its firm link with an "association", the name of which is mentioned in the hundi and subject to the bye-laws of which the hundi is drawn. By and large, this is also consistent with the practice now being followed. For instance, with reference to hundis coming for payment to the members of the Bombay Shroffs' Association, the hundi invariably bears the expression that it is drawn as per the rules of the Bombay Shroffs Mahajan.

AFTER CODIFICATION HUNDI IS TO BE DRAWN ONLY UNDER THE HUNDI CODE

7. In order that the hundi system may develop on sound and healthy lines and it does not become subject to any undesirable stigma or odium regarding the nature of the transactions in which hundis may be employed, it is necessary to provide that after the coming into force of the Hundi Code, the hundi will be recognised and be enforceable only when it

conforms to the requirements of the Hundi Code. Hence, it is necessary to provide that notwithstanding any other law for the time being in force, after the coming into force of the Hundi Code :

- (i) no indigenous negotiable instrument shall be recognised as a hundi or be valid and enforceable unless such instrument comes within the scope of the definition of "hundi" as given in the Code, and
- (ii) no local usage relating to any negotiable instrument as defined in section 13 of the NIA, which is inconsistent with the provisions of that Act shall be recognised.

All the representative bodies have also expressed their agreement for such a proposal. This will also help in streamlining the provisions of the NIA by deleting the proviso to section 1 of that Act whereunder usages inconsistent with the provisions of the NIA are now recognised as regards NIA paper.

DATE AND MITI

8. Generally hundis are drawn according to the Vikram Samvat. No hundi is recognised if it is drawn without a date or miti. When a hundi bears both a date and a miti, calculations for the purpose of interest payable on a hundi are made according to the date *i.e.*, the Gregorian calendar. When only the miti is stated (*i.e.*, the date according to the Vikram Samvat), certain mitis will have more than one day. For the purpose of calculation, when miti alone is stated, the representatives of the associations have agreed to abide by the following rules :

- (i) if miti falls on two days of the week and the earlier day is also stated in the hundi, then that miti shall be equivalent to two days; and
- (ii) if the miti falls on two days of the week and neither of the two days is stated in the miti, then the miti shall be equivalent to one day.

PARTIES TO THE HUNDI

9. Rakhya is the person to whom or to whose order the drawer has directed the payment of the hundi. The hundi shall state the name and address of the drawer, the drawee and the name of the jikriwala (if any) and also the name of the rakhya. A jikriwala is the drawee in case of need.

PENTH AND PER PENTH

10. When a hundi is lost, the rakhya or other holder has the right to claim a penth (duplicate). When a penth is lost, the rakhya or the holder may ask for a per penth (*i.e.*, duplicate of the penth). The hundi

system provides for a fairly simple and generally a foolproof method for a holder of a hundi or a penth, which is lost, stolen, misplaced, torn, defaced, or destroyed, obtaining the penth or the per penth, as the case be. The may provisions in this regard are similar under the rules of all the sharafi and merchant associations concerned with hundi transactions. We have recommended appropriate provisions for the issue of penth or per penth, which accord substantially with the rules now in vogue for the issue of penth or per penth.

MATURITY DATE AND PAYMENT OF A HUNDI

11. Under the rules applicable with reference to hundi system, a hundi does not become due for payment on the day it is drawn, even though it is payable at sight. A darshani hundi (namely, the sight hundi) becomes due for payment on the working day succeeding immediately after the date or miti of the hundi. A hundi payable after a specified period becomes due on the working day succeeding immediately the last day of the period specified in the hundi.

STALE HUNDI AND REVALIDATION

12. On the analogy of a stale cheque in accordance with banking practice (we have recommended a statutory recognition for the concept of stale cheque in our Report on Negotiable Instruments Law), there is the practice of regarding a hundi as stale six months from the date the instrument becomes payable. In such a case, the drawer may be requested to revalidate the hundi and on such revalidation the hundi may be presented for payment which has to be in accordance with the bye-laws of the association subject to which it has been drawn.

KHADI SYSTEM

13. When the drawee or jikriwala, as the case may be, of a hundi which is drawn as payable at sight, does not note or pay the hundi when it is duly presented for payment, and at the same time he does not forthwith indicate his refusal to pay, the hundi is regarded as kept khadi. During the period a hundi is so regarded as khadi, it is not regarded as dishonoured for the period it is so kept. The period during which the hundi may be kept khadi shall not exceed three working days from the date or miti of its presentment. After this period, unless the drawee or jikriwala, as the case may be, honours the hundi within the time allowed and in the manner prescribed by the bye-laws of the association subject to which the hundi has been drawn, prior to the issuing of praman patra, he is regarded as having dishonoured the hundi.

14. For the period the hundi is regarded as khadi, if the drawee or jikriwala, as the case may be, honours the same, he is liable to pay, in addition to the amount of the hundi, interest for the khadi period

at the rate prescribed by the association subject to which the hundi is drawn.

'NOTING'

15. There is also the practice of 'noting' on the hundi which is payable at sight on its presentment for payment. This practice is necessary since the payment by the drawee need not be "across the counter". This 'noting' should not be confused with the expression 'noting' and 'protest' used in the NIA.

PAYMENT OF HUNDI BY CASH OR CHEQUE

16. Ordinarily, the hundi is payable only in cash. However, the practice has recently developed whereby hundis are drawn requiring payment thereof by cheque. This practice owes its origin to section 40A(3) of the Income-tax Act, 1961, to which we have already made reference. The Banking Commission (1972) has already recommended that from the purview of section 40A(3) of the Income-tax Act hundi transactions should be protected. The case for taking hundi transactions outside the range of the restraints flowing under section 40A(3) of the Income-tax Act would be strengthened on the codification of the hundi rules. Hence, we recommend that at any rate after the codification of the hundi rules and usages, hundis need not be subjected to the restraints under section 40A(3) of the Income-tax Act.

17. Even so, the practice that has developed of paying hundis by cheque may be considered as convenient in some cases, particularly in areas where the traders do not want to undertake the risk of carrying large amount of cash. But this should be a matter that should be left to the discretion of the drawer. All the associations before us have agreed that the independence of the hundi system should be preserved and for this purpose, the ordinary rule for payment should be payment by cash. However, where the hundi specifies that payment thereof shall be made by cheque, it may be so paid.

RECONCILING THE EASTERN AND WESTERN ZONES' PRACTICES RE. CASH PAYMENT;

18. In the western zone, unless the drawee chooses to keep a hundi khadi, the hundi presented during business hours on a working day is generally paid on the same day, whether the payment is by cash or by cheque. However, in the eastern zone, when a hundi is presented during business hours on a working day, if payment is to be made by cash, the drawee makes the payment on the next day and for this one day the hundi is not regarded as khadi. Since the hundi is not regarded as khadi, it does not carry any interest when payment is made on the next day. We have reconciled this difference prevailing in the practices

adopted in the eastern and western zones by providing that payment on a hundi shall be made within the time allowed and in the manner prescribed by the bye-laws of the association subject to which the hundi is drawn. However, we do hope that in the larger interest of the development of the system, the eastern zone practice will gradually develop in such a way that payment on a hundi will be effected, whether it is by cash or by cheque, on the same day of presentment (unless the presentment is considered as too late for payment and that if it is not so paid, the hundi will be regarded as khadi. But it is not desirable to impose this on the shroffs, traders and merchants having recourse to hundi transactions. The sharafi associations and merchant bodies concerned with hundi transactions may consider this in due course and try to bring their bye-laws with reference to the time that may be required for payment and the procedure for making such payment on similar and identical lines as far as possible.

DISCHARGE OF HUNDI BY PAYMENT

19. On receiving payment of the amount of the hundi, the person receiving the payment shall discharge it by acknowledging payment on the back of the hundi from the drawee, the acceptor or the jikriwala from whom the payment has been received, put the date or miti of such receipt and sign it and deliver the khokha (discharged hundi) to the person who makes the payment. Where the amount of the hundi is paid by a cheque, the drawee, acceptor or jikriwala may obtain from the holder presenting the hundi a receipt, if the bye-laws of the association subject to which the hundi has been drawn so permit, stating that the hundi is paid by the cheque, giving full particulars thereof and also stating that the hundi will become a khokha on the realisation of the cheque.

REPORT OF DISHONOUR AND PRAMAN PATRA

20. Praman patra means the certificate issued by an association that the hundi has been dishonoured and it also includes a stamp of dishonour duly affixed on the hundi by the association. When a hundi has been dishonoured by non-acceptance, non-noting or non-payment, the holder may, as expeditiously thereafter as possible, report the matter to the association subject to whose bye-laws the hundi has been drawn, in the form prescribed by the bye-laws of that association. On receipt of such report and payment of such fee to the association as may be prescribed for the purpose, the association will, with all expedition as is reasonably possible, enquire of the drawee, acceptor or jikriwala, as the case may be, the reason for his dishonour and note the reasons, if any, and issue praman patra to the holder presenting the hundi as per its bye-laws.

PAYMENT OF NAKRAI SHIKARAI

21. Nakrai shikarai is the compensation that is payable in the event of dishonour of a hundi by the persons liable. We have discussed this with several associations and have considered the prevailing practices in relation thereto. There has been a general understanding as to the rate at which nakrai shikarai may be charged. The associations have also agreed that it is in the interest of the hundi system to specify the rate at which the nakrai shikarai will be payable in the event of dishonour of the hundi. Accordingly, after discussions with the representative associations, agreement has been reached amongst themselves on the provision that may be made in the draft Hundi Code as to the rate of nakrai shikarai.

22. The compensation payable as nakrai shikarai under the Hundi Code with reference to a hundi is thus required to be determined at three-fourths of a percent of the amount of the hundi. Unlike under the NIA, it is thus easy to quantify the compensation payable in the event of dishonour of a hundi. Thus, the settlement of a dispute arising on account of non-payment may be effected expeditiously.

RATE AT WHICH INTEREST IS PAYABLE

23. When a hundi is kept khadi and is subsequently paid, the drawee is liable to pay the hundi with interest at a rate that may be specified under the bye-laws of the association. After dishonour, along with the recovery of compensation in the shape of nakrai shikarai, the holder is also entitled to recover from his endorser or drawer (as the case may be) the amount due on the hundi with interest at a rate specified under the bye-laws of the association. The associations concerned with hundi transactions in the different centres of our country now do this service of specifying the rates at which such interest is payable. In the proposals for the Hundi Code, provision is made for the associations continuing to play this role.

ISSUE OF MAJARENAMA

24. Earlier we have referred to the dispute resolving role played by the associations concerned with hundi transactions, which helps the shroffs, merchants and traders for obtaining an expeditious and inexpensive settlement of their claims. This positive and constructive role of an association requires adequate statutory support. The decisions rendered by the associations now are not as such having the status of an arbitration award or of a judicial decree. Nevertheless, the members of the business community who have recourse to hundis abide by those decisions and hardly there arises a case where a person disregards the decision of an association. In view of this business expectation and commercial morality, we are recommending, on the lines

requested by the sharafi associations and merchant bodies, for the associations continuing to play the role with adequate legal backing for their decisions with reference to hundi disputes. In other words, the business community does not want that disputes relating to hundis should be subjected to the ordinary procedures of law as regards settlement of claims with its involved and protracting delays defeating the very purpose of instituting the action. Hence, in consultation with the sharafi associations and merchant bodies, including the FICCI, we are providing for the issue of majarenama by an association, which will be equivalent to an award as regards any hundi dispute. At the same time, the associations have urged before us the necessity for simple and flexible procedures being allowed to be followed by the sharafi associations and merchant bodies. Having regard to all factors, the proposals in the draft Hundi Code with reference to majarenama provide :

- (1) Any dispute relating to hundis and/or arising therefrom and/or in any way concerning thereto shall be decided by the association subject to whose bye-laws the hundi is drawn. The decision of the association concerning any such dispute shall be known as "majarenama". The association may call upon the parties to any such dispute to pay the association such fees as it may prescribe by its bye-laws for determining any such dispute and issuing a majarenama.
- (2) The association shall have the powers to summon parties ask for the production of documents and be competent to exercise all such powers as are conferred on an arbitrator duly appointed under the Arbitration Act, 1940. However it shall not be necessary for the association to adhere strictly to the procedures prescribed under the Arbitration Act, 1940 in dealing with any such disputes.
- (3) The majarenama of the association concerning any such dispute shall be final and binding on the parties.
- (4) The majarenama of the association shall have the force of an award under the Arbitration Act, 1940, and shall be capable of being executed in the manner provided under that Act.
- (5) The association may, for the purpose of enquiring into such disputes, appoint arbitrators out of a panel of arbitrators maintained for the purpose by the association.
- (6) The majarenama shall not attract any stamp duty but in other respects it shall be drawn up in the form in which an award is required to be drawn up under the Arbitration Act, 1940.

25. Such provisions are necessary in order that there could be legal recognition for the dispute resolving role of the associations concerned with hundi transactions. As we have earlier pointed out, this function is performed by the mercantile bodies in our country as the natural successors of the "merchant guilds" of medieval times which were deciding commercial disputes. This feature which has continued in our country with reference to hundi transactions merits preservation. In this regard, please see also Annexure Nos. 5 and 6 to this Report, wherein the necessity for preserving this functional role in the process of codifying the hundi rules has been brought out.

OTHER POWERS OF THE ASSOCIATION

26. The association should have the power to declare holidays, and specify the business hours for presentment for payment, noting and acceptance of hundis. The association should also be empowered to frame bye-laws for all matters for which such bye-laws are necessary. The association should also be authorised to declare from time to time the rate at which interest shall be payable on hundis during the khadi period, etc. The provisions in the proposed Hundi Code provide accordingly.

NO STAMP DUTY

27. The hundis that will be covered by the Hundi Code will be genuine commercial hundis arising in the course of business transactions. They will exclude transactions in the nature of promissory notes. It is necessary to facilitate recourse to such hundis. Hence, *inter alia*, it should be made clear that a hundi shall not be liable to any stamp duty. Hundi being in the nature of a negotiable instrument, the union has got the powers to provide such exemption. Already the darshani hundis are not liable to stamp duty.

"ASSOCIATIONS" WHICH MAY REGULATE HUNDI TRANSACTIONS

28. We have seen the important role played by the associations in the regulation of hundi transactions. We have considered the set-up of the associations which are now performing such role. We have also discussed the matter with the representative bodies. In the light of the discussions, the associations have agreed for the proposal that an "association" which may exercise the powers to regulate hundi transactions by framing bye-laws, issuing majarinama, etc., may be defined in the Hundi Code as a—

company licensed under section 25 of the Companies Act, 1956 or a body registered under the Societies Registration Act, 1869

or under the Indian Trade Union Act, 1926, which is now assisting and regulating transactions in hundis or which takes up this work later.

We consider that this is a reasonable and a fairly workable definition which will help also other associations to take up this beneficial role in areas where there are at present no such associations which perform this role.

SECTION 2.—HUNDIS WITH SPECIAL FEATURES

29. After having thus considered the general features of the hundis and the legal framework necessary to support the same, we shall now deal with hundis with special features which merit recognition and appropriate provisions in the Hundi Code. In the light of the discussions with the several representative bodies, now there is agreement amongst all the representative bodies who came before us that such recognition need be given with reference to the following types of hundis :

- (i) Bilti hundis,
- (ii) Nishanwali hundis,
- (iii) Namjog hundis,
- (iv) Shahjog hundis,
- (v) Dhanijog, and
- (vi) Farmanjog.

(i) *Bilti hundis*

30. As regards bilti hundis, in the earlier chapters and also in our Report on Negotiable Instruments Law we have drawn attention to the fact that they being indigenous commercial trade bills they should qualify as eligible bills under the New Bill Market Scheme of the Reserve Bank of India. When every encouragement is proposed to be given for genuine trade bills it is but necessary to ensure that the existing indigenous trade bills which *inter alia* include bilti hundis, are well protected. The advantage of the bilti hundi is that it has a condition that the documents mentioned in the hundi should accompany the hundi. The rules in this regard avoid the necessity for an independent agreement providing for extension of documentary credit. In other words, the procedure for making a bilti hundi is much more simple than the procedure which ordinarily one has to adopt while drawing a documentary bill under the NIA. It is for this reason we have suggested in our Report on Negotiable Instruments Law¹ that bills drawn under the NIA may

¹ Report of the Banking Laws Committee (Government of India) (1975) Recommendation No. 8.

also be allowed to contain a condition regarding proper presentment of the listed documents along with the bill.

31. In the light of our discussions with the representative bodies, there is agreement for provisions with reference to bilti hundis on the following lines :

- (1) When the drawer of hundi intends that the hundi is to be accompanied by a document or documents of title to goods and that the amount of the hundi should be paid only against delivery of such document or documents, a statement to that effect shall be made on the hundi itself. Such a hundi shall be called a "bilti hundi".
- (2) In the case of such a hundi, the acceptance or noting of the hundi for payment shall be conditional on the hundi being presented for payment along with the documents mentioned in the hundi.
- (3) Payment of the amount of the hundi shall be made only if the person demanding such payment hands over such document or documents duly indorsed in favour of the drawee or the jikriwala who makes such payment.

(ii) *Nishaniwali hundis*

32. "Nishaniwali hundi" is a hundi which either states the name of a person who may be a buyer of the goods on whose account the drawer wants the drawee to honour the hundi, or states the account which the drawee is to debit for honouring the hundi. Such specified person or the holder of such account is regarded as the "nishaniwala".

33. The nishaniwala is entitled at any time before the drawee pays the amount of the hundi to direct the drawee not to pay the amount of the hundi or to pay only a specified amount which may be lesser than the amount of the hundi. The nishaniwala shall normally give such direction in writing signed by him. In cases of urgency, the nishaniwala may give such direction to the drawee orally or by a telegram and on receipt of such oral or telegraphic direction, the drawee shall withhold payment of the amount of the hundi. The nishaniwala must subsequently confirm his oral directions, in writing, signed by him. The drawee shall act in accordance with the directions given by the nishaniwala in writing signed by him. When no amount or only an amount lesser than the amount of the hundi has been so paid, the rights and liabilities, if any, which may thereby arise are only as between the drawer of the nishaniwali hundi and the nishaniwala.

34. The nishaniwali hundi is particularly useful to traders and merchants to order goods and direct the hundi to be drawn by the seller on

their principals or their head offices. A *bilti hundi* may also be a *nishaniwali hundi*. In such a case, the seller may despatch the goods and discount the hundi locally and obtain ready payment. The *nishaniwali hundi* avoids the necessity for the merchants and traders making advance payments to the sellers on the spot. At the same time, the seller of the goods is not prejudiced since he can draw a hundi and discount the same in the market. The proposals for the Hundi Code adequately provide for the recognition of *nishaniwali hundis*.

(iii) *Namjog hundis*

35. A "namjog hundi" is a hundi drawn as payable only to the person named therein. A namjog hundi cannot be negotiated, provided however that it may be endorsed only for the purpose of realisation or for collection. Subject to this, the drawee shall pay the amount of a namjog hundi to the person named therein and to nobody else.

36. A namjog hundi is not negotiated. Functionally, this serves the purpose of an "account payee" cheque. The provisions in the proposed Hundi Code retain the features of the namjog hundi.

(iv) *Shahjog hundis*

37. We have earlier mentioned that the practices relating to shahjog hundis are not the same in the western and eastern zones of our country. When the prevailing practices with reference to shahjog hundis are studied with reference to the decisions rendered earlier, it appears that there has been perceptible change in the practices that are being followed. Now-a-days a shahjog hundi is also transferred by endorsement, though earlier it was probably regarded as a hundi transferable by mere delivery. However, the main feature which the shahjog hundi retains now in the western zone is that the hundi is required to be paid only to a "shah" who is understood as a man of worth and substance known as such in the bazaar. The shah receiving the payment undertakes to the drawee the responsibility of refunding the amount should it turn out that the hundi was false or obtained as a result of fraud or had been stolen or forged. Since the shah will be a person available in the market, it facilitates the drawee to get the refund from him easily in such circumstances.

38. However, in the eastern zone also hundis are drawn and the expression "shahjog" is invariably found in almost all the hundis. Nevertheless, there is no such usage attributed to the shahjog hundis in the eastern zone. In the eastern zone the expression "shahjog" is understood as simply meaning "To Shri" or "To Shriman", i.e., an expression of honorific significance without anything specially intended thereby

In view of the differences in the practices between the eastern zone and the western zone with reference to shahjog hundis, the question of reconciling the differences has arisen.

39. While the western zone representatives have pointed out to us the necessity for preserving the features of the shahjog hundi as they understand, the eastern zone representatives have pointed out that the expression "shahjog" is being used in hundis drawn in several villages and remote parts in the eastern zone without intending to specify any limitation on the class of persons who may obtain payment on such hundis. In view of this, they have pointed out that giving an all-India operative force to the practices prevailing in the western zone would create a disruption in the smooth flow of hundi transactions in the eastern zone. We considered that the points urged by the representatives of both the zones are valid. Hence, we had intensive discussions as to the best means for giving statutory recognition to the shahjog hundi (as understood in the western zone) and at the same time not create any difficulty in the smooth working of hundi transactions in the eastern zone of our country. It has been ultimately agreed that the special features of the shahjog hundi as noticed now in the western zone may be retained with reference to the shahjog hundi, provided it also bears two transverse parallel lines across its face and thus is "crossed". In our view, this appears to be the best way to preserve the distinct characteristics of shahjog hundis as prevalent in the western zone; thereby, we will be increasing the scope for wider circulation of shahjog hundis (with features as prevalent in the western zone).

40. Hence, we have provided in our draft for the Hundi Code for a shahjog hundi to be recognised under the Act provided it is "crossed", and for such a hundi to be paid to a "shah", and for the "shah" being responsible to the drawee in the event of the hundi turning out later to be false, fraudulent, stolen or forged (*vide* clause 74).

DEKHADNARJOG HUNDI AND FARMANJOG HUNDI

41. Any hundi payable to the presenter is known as a dekhadnarjog hundi (bearer hundi). Any hundi payable to the rakhya or to his order known as a farmanjog hundi (order hundi). The definition of "hundi" agreed to by all representative bodies before us provides for both bearer and order hundis. The provisions in the proposed Hundi Code applicable to bearer and order hundis are adequate to cover dekhadnarjog hundis and farmanjog hundis. Hence, no further special provisions are necessary in regard to these two types of hundis.

PROVISIONS RE. SHROFFS

42. The Gujarat Federation of Shroffs, the Ahmedabad Shroffs Association and several other shrafi associations in the Gujarat State

have made submissions before us for appropriate provisions for the recognition of a "shroff" in the scheme of the Hundi Code and for the "shroff" being given appropriate safeguards on the lines of the provisions applicable to bankers under the NIA (*vide* section 85, 85A, 131 and 131A). They have urged before us that 80 to 90 per cent of the volume of hundi transactions in our country relates to hundis issued and/or paid by "shroffs". Hence, they have urged that the position of "shroffs" with reference to hundis is identical with that of commercial banks' with reference to cheques and drafts. On the same logic, they have suggested the incorporation of similar provisions with reference to shroffs in the proposed Hundi Code. They have also requested that a hundi bearing the expression "payable through shroff" should be paid to a "shroff". For the definition of "shroff", the above sharafi associations have suggested the following which in several respects substantially accords with the basic features of the definition of "banking" in the Banking Regulation Act, 1949 :

" 'shroff' means a person whose principal business is to accept deposits and advance loans and who, in the course of such business, draws, accepts and/or honours hundis".

43. In the Bombay Shroffs Association, certain leading members have submitted separately in support of the provisions proposed by the Gujarat sharafi associations. On these proposals there has been no unanimity. However, the majority of the Bombay Shroffs Association's representatives and other associations in the Joint Sharafi Conference, Bombay, have not supported these proposals. The representatives of the Merchants' Chamber of Commerce, Calcutta, have suggested that the provisions relating to shroffs may be confined in their scope to shahjog hundis (crossed). We have considered the Gujarat sharafi associations' submissions on merits.

44. We consider it appropriate that while codifying the hundi rules and usages, we recognise the status of the "shroff". Since the "shroffs" are involved in the payment and collection of a large volume of hundis, the demand for provisions to safeguard their interests, on the lines of the provisions now available to commercial bankers, seems to us to be very reasonable. These provisions will help the development of the indigenous banking business which the Banking Commission (1972), the Law Commission of India and other high-powered bodies have recognised as performing a very vital function, particularly in the rural and semi-urban parts of our country. Entrustment of the work of codification to us by the Government of India evidently implies that indigenous banking has a positive role in our country's economic development.

“SHROFF” — DEFINITION

45. Hence, we are recommending in the proposed Hundi Code a definition of “shroff” on the lines suggested by the Gujarat sharafi associations. The reference to “principal business” in the definition appears to be necessary so that definition may be of practical value. The definition of “banking company” originally introduced in our Companies Act, 1922 (in 1936) provided for this requirement. However, in order that there arises no ambiguity in the flow of hundi transactions, we are also suggesting a provision whereunder the “association” may publish lists of its members who may be regarded as shroffs. For the purposes of the provisions relating to shroffs, the lists published by the associations in this regard shall be final and shall not be liable to be challenged in any court of law. While the definition will provide the guidelines for the associations to publish the lists of shroffs, the published lists will help those members of the business community, who are having recourse to hundis, to recognise who are the shroffs who may be eligible to be regarded as such under the scheme of the Hundi Code.

SHROFFS — PROTECTION CLAUSES

46. We also consider that on merits, the requests of the Gujarat sharafi associations for provisions on the lines of those available to the paying banker and the collecting banker (as under the NIA) are just. Hence, we consider that such provisions should be available to shroffs who are the indigenous bankers of the country. In our view, these provisions will enable the development of the sharafi business and this will also contribute to the growth and development of those sections of the business community like the small businessmen, retailers and traders who are primarily relying on the hundi system for the settlement of their trade and commercial claims. When we consider the case for provisions to safeguard indigenous bankers (shroffs) under the scheme of the Hundi Code, the case cannot be considered in isolation only with reference to shahjog hundis.

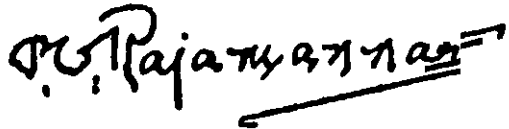
47. In the light of the above, with reference to shroffs we have suggested in the proposed Hundi Code provisions somewhat on the lines of the provisions in the NIA applicable to the paying bankers and the collecting banker.

SECTION 3 — DELINKING HUNDIS FROM THE NIA

48. When there is no inconsistent usage proved with reference to any hundi, the courts in our country have been looking to the provisions of the NIA by way of analogy. Substantial compliance with the provisions of the NIA is required in such cases. As we have pointed out already, the concept of substantial compliance is creating considerable difficulties to the mercantile community. Hence, there is the necessity for the Hundi Code being a comprehensive statute. Consequently,

there should be no occasion for relying on any provisions of NIA, with reference to hundis. In other words, rules relating to dis- and have to be self-contained so that the hundi system may be- and facilitate the growth of commerce and trade. Hence, to be- and necessary, the provisions of the NIA, which are useful and who- and be applied with reference to hundis, will have to be made as provisions. proposed Hundi Code with suitable adaptations and mea- and

49. In view of the above, the proposed Hundi Code has been based on the NIA as regards the parties to hundis, the rules of negotia- tion, payment and discharge from liability, special rules of lawing and such other matters for which provisions are necessary. The up- of a comprehensive Hundi Code. The necessity for such a Code on has been discussed with the several representative bodies. In these aspects all the representative bodies are *ad idem*.



(P. V. RAJAMANNAR)

Chairman



(R. KRISHNAN)

Secretary

MADRAS

26th September 1978

CHAPTER 5
PART II
“THE HUNDI CODE BILL, 1978”

THE HUNDI CODE BILL, 1978

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THE HUNDI CODE BILL, 1978

(BILL NO.OF 1978)

An Act regulate hundi transactions [and [codify customs and usages relating thereto.

Be it enacted by Parliament in the Twentyninth year o the Republic of India as follows :

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Hundi Code Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It extends to the whole of India except the State of Jammu & Kashmir, to which State it shall extend subject to modifications, if any, which the President may notify in consultation with the Government of that State.

2. *Definitions.*—In this Act, unless there is anything repugnant to the subject or context,—

(i) “acceptance” means the assent by the signature of the drawee or the jikriwala of a hundi for payment on the due date of its amount together with the date of such signature;

(ii) “association” means a company licensed under section 25 of the Companies Act, 1956, or a body registered under the Societies Registration Act, 1869, or under the Indian Trade Unions Act, 1926, which on the date of commencement of this Act is assisting and regulating transactions in hundis or which after the commencement of this Act takes up this work;

(iii) “bye-laws of an association” means the rules framed by an association under section 82;

(iv) “date” mentioned in a hundi means the day according to the Gregorian calendar;

(v) “discharge” means the acknowledgement by the presentor on the hundi of its payment;

(vi) “drawee” means the person who is directed by the drawer to pay the amount mentioned in the hundi;

(vii) “drawer” means the person who has drawn the hundi ;

(viii) "holder" of a hundi means a person in possession of a hundi which is either drawn in his favour or indorsed to him or to his order or to bearer or in blank, and includes the purchaser of the hundi; when the hundi is lost or destroyed, its holder is the person so entitled at the time of the loss or destruction;

(ix) "holder in due course" means any person who for consideration became the holder of a hundi before the amount mentioned in it has become overdue and without having sufficient cause to believe that any defect existed in the title of the person from whom he has derived his title;

(x) "holiday" means any day which is declared as a holiday under section 80;

(xi) "hundi" means an instrument, in writing, which has more than two parties and which contains a statement that it is drawn subject to the bye-laws of the association mentioned in the instrument and which contains an order, signed by the drawer, directing the drawee to pay at sight or after the period specified therein, a specified sum of money only to or to the order of a certain person of himself or to the bearer of the instrument;

Explanation : Where a hundi is drawn by a person at one place on himself at another place, the drawer and the drawee shall be considered as two parties for the purpose of this clause;

(xii) "to indorse a hundi" means the signing on a hundi by the holder thereof, for the purpose of negotiation;

(xiii) "indorsee of a hundi" means the person in whose favour the hundi is indorsed by name;

(xiv) "indorsement in blank" means the indorsement made by the indorser by signing his name only;

(xv) "indorsement in full" means the indorser signing the hundi and adding a direction to pay the amount mentioned in the hundi to or to the order of a specified person;

(xvi) "indorser" means the person who indorses the hundi;

(xvii) "jirkriwala" means the person who is directed by the drawer, rakhya or any indorser to pay the amount mentioned in the hundi in case the drawee does not accept the hundi or the drawee refuses either to note or to pay the amount of the hundi, whether or not accepted by him;

(xviii) "khokha" means a discharged hundi;

(xix) "material alteration" with reference to a hundi means any alteration which changes the contract of any party thereto in any respect, including any such change in—

(a) an incomplete hundi, by completing it otherwise than as authorised; or

(b) the writing as signed, by adding to it or by removing any party of it; or

(c) the name of the association, the date or the miti, the sum payable, the time of payment, or the place of payment; or

(d) the addition of a place of payment where the hundi has been accepted generally, without the acceptor's assent; or

(e) the addition of the name of a new drawer without the consent of the original drawer or drawers; or

(f) an alteration in the name of the rakhya of a hundi; or

(g) an unauthorised description in the rakhya's name; or

(h) the addition of the words requiring payment of interest at a specified rate, where originally no rate of interest was provided in the hundi;

(xx) "maturity" of a hundi is the date on which it falls due;

(xxi) "miti" mentioned in a hundi means the day according to the Vikram Samvat;

(xxii) "nakrai shikarai" means the compensation payable under section 84 on the dishonour of a hundi;

(xxiii) "negotiation" of a hundi means its transfer to any person so as to constitute that person the holder thereof;

(xxiv) "noting" means the recording by the drawee under his signature and date or miti the fact of its presentment for payment; "noting" does not amount to "acceptance";

(xxv) "payment in due course" means the payment of a hundi in accordance with the apparent tenor thereof in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that such person is not entitled to receive payment of the amount therein mentioned;

(xxvi) "penth" means the instrument given by the drawer of a hundi before payment is made of the hundi, setting out therein the material particulars of the hundi which has been lost, stolen, misplaced, torn, defaced or destroyed;

(xxvii) "per penth" means the instrument given by the drawer of a hundi before payment is made of the hundi or its penth, setting out

therein the material particulars of the hundi and the penth which have been lost, stolen, misplaced, torn, defaced or destroyed;

(xxviii) "praman patra" means the certificate issued by an association that the hundi has been dishonoured and it also includes a stamp of dishonour duly affixed on the hundi by the association;

(xxix) "rakhya" means the person to whom or to whose order the drawer has directed the payment of the hundi;

(xxx) "shah" means a responsible and respectable person of worth, substance and credit on whose responsibility the amount of the shahjog hundi can be paid;

(xxxi) "shroff" means a person whose principal business is to accept deposits and to advance loans and who, in the course of such business, draws, accepts and/or honours hundis; and

(xxxii) "working day" for the purposes of accepting, noting of presentment for payment of a hundi means a day which is not a holiday.

3. Hundis to be drawn only under this Act.—Notwithstanding any other law for the time being in force, after the coming into force of this Act—

(i) no indigenou negotiable instrument shall be recognised as such or be valid and enforceable unless such instrument comes within the scope of the definition of "hundi" as given in this Act; and

(ii) no local usage relating to any negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881, which is inconsistent with the provisions of that Act shall be recognised.

CHAPTER II

CONTENTS OF A HUNDI

4. Hundi to state date or miti.—A hundi shall state the date or miti on which the hundi has been drawn.

5. Fixing the days of the hundi.—(1) If the miti falls on two days of the week and the earlier day is also stated in the hundi, then that miti shall be equivalent to two days.

(2) If the miti falls on two days of the week and neither of the said two days is stated in the hundi, then the miti shall be equivalent to one day.

6. (1) Hundi bearing both date and miti.—Where a hundi states both the date and the miti, the date alone shall prevail.

(2) **Hundi bearing no date and no miti.**—Unless a hundi bears a date or a miti, it shall not be payable.

7. *Hundi to state the name of the drawer, drawee and rakhya.*—A hundi shall state the name and address of the drawer, the drawee and the jikriwala (if any) and also the name of the rakhya.

8. *Hundi to state amount.*—A hundi shall state the amount payable under it both in words and in figures. No liability to make any payment under a hundi shall arise if the amount payable under it cannot be clearly ascertained or there is a discrepancy between the amount as stated in words and that as stated in figures.

CHAPTER III

PENTH AND PER¹ PENTH

9. *Penth.*—(1) When a hundi has been lost, stolen, misplaced, torn, defaced or destroyed, the person, who was entitled to it and from whose possession it was so lost, stolen, misplaced, torn, defaced or destroyed, shall be entitled by a communication in writing signed by him to demand from the person from whom he acquired the hundi to procure for him its penth, and the person on whom such demand is made shall in his turn be entitled by a communication in writing signed by him to make a similar demand on the person from whom he acquired it and so on and finally the rakhya shall in his turn be entitled to make a similar demand from the drawer of the hundi.

(2) The drawer shall thereupon inform the drawee, in writing, of the material particulars of the hundi and state that a demand has been made upon the drawer for the issue of its penth and that the drawee shall, therefore, inform the drawer whether the drawee has paid the amount of the hundi. If the drawee has already made payment of the hundi before receipt of such information, in writing, from the drawer, the drawee shall inform the drawer accordingly. If, however, the drawee has not already made payment of the hundi before receipt of such information in writing from the drawer, the drawee shall not, after receipt of such information in writing from the drawer, pay the amount of the hundi.

(3) When the drawee informs the drawer that the drawee has not paid the amount of the hundi, the drawer shall prepare its penth and send it to the rakhya, the rakhya shall send it to the person to whom he transferred the hundi and so on, till the penth reaches the person from whose possession the hundi was so lost, stolen, misplaced, torn, defaced or destroyed.

(4) After the drawer issues the penth to the rakhya, the penth will replace the hundi and no payment shall be made on the original hundi.

(5) The penth shall be deemed to be the original hundi, with right and obligations in respect thereof as existing at the date when it was lost, stolen, misplaced, torn, defaced or destroyed.

10. *Per penth.*—(1) When the penth has been lost, stolen, misplaced, torn, defaced or destroyed, the person who was entitled to the penth and from whose possession it was lost, stolen, misplaced, torn, defaced or destroyed shall be entitled, by a communication in writing signed by him to demand from the person from whom he acquired the penth to procure for him its per penth, and the person on whom such demand is made shall in his turn be entitled by a communication in writing signed by him to make a similar demand on the person from whom he acquired it and so on and finally the rakhya shall in his turn be entitled to make a similar demand from its drawer.

(2) The drawer shall thereupon inform the drawee of the material particulars of the penth and state that a demand has been made upon the drawer for the issue of its per penth and that the drawee should, therefore, inform the drawer whether the drawee has paid the amount of the penth. If the drawee has already made payment of the penth before receipt of such information from the drawer, the drawee shall inform the drawer accordingly. If, however, the drawee has not already made payment of the penth before receipt of such information from the drawer, the drawee shall not after receipt of such information from the drawer pay the amount of the penth.

(3) When the drawee informs the drawer that the drawee has not, paid the amount of the penth, the drawer shall prepare its per penth and send it to the rakhya, the rakhya shall send it to the person to whom he transferred the penth and so on till the per penth reaches the person from whose possession the penth was so lost, stolen, misplaced, torn, defaced or destroyed.

(4) When the drawer issues the per penth to the rakhya, the per penth will replace the penth and no payment shall be made on the penth.

(5) The per penth shall be deemed to be the penth, with rights and obligations in respect thereof as existing at the date when it was lost, stolen, misplaced, torn, defaced or destroyed.

CHAPTER IV

PARTIES TO HUNDIS

11. *Capacity to draw hundi.*—(1) Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by drawing, acceptance, indorsement, delivery and negotiation of a hundi.

(2) A minor may draw, accept, indorse, deliver and negotiate a hundi so as to bind all parties except himself.

(3) Nothing herein contained shall be deemed to empower a corporation to draw, indorse or accept a hundi except in cases in which, under the law for the time being in force, it is so empowered.

12. *Agency.*—Every person capable of binding himself or of being bound, as mentioned in section 11 above, may so bind himself or be bound by a duly authorised agent acting in his name. A general authority to transact business does not confer upon an agent the power of noting, accepting or indorsing hundis so as to bind his principal. An authority to draw hundis does not of itself import an authority to indorse.

13. *Liability of agent signing.*—An agent who signs his name to a hundi without indicating thereon that he signs as agent or that he does not intend thereby to incur personal responsibility is liable personally on the hundi, except to those who induced him to sign upon the belief that the principal only would be held liable.

14. *Liability of legal representative signing.*—A legal representative of a deceased person who signs his name to a hundi is liable personally thereupon unless he expressly limits his liability to the extent of the assets received by him as such.

15. *Liability of drawer.*—The drawer of a hundi is bound, in case of dishonour by the drawee or acceptor or jikriwala thereof, to pay the holder of the hundi the entire amount of the hundi with nakrai shikarai and interest with such other sum, if any, as may be prescribed by the bye-laws of the association, provided a praman patra has been obtained and notice thereof has been given to, or received by, the drawer.

16. *Liability of acceptor.*—(1) The acceptor of a hundi is bound to pay the amount thereof at maturity to the holder of the hundi on presentment thereof as per the bye-laws of the association.

(2) In default of such payment as aforesaid, the acceptor is bound to pay the entire amount of the hundi with nakrai shikarai and interest with such other sum, if any, as may be prescribed by the bye-laws of the association.

17. *Only drawee or jikriwala can be acceptor.*—The drawee of a hundi, or the jikriwala if the drawee refused to accept the hundi, or when there are more jikriwalas than one each of them after the previous jikriwala refuses to accept the hundi, can be the acceptor of the hundi.

18. *Liability of indorser.*—Whoever indorses and delivers a hundi before maturity is bound thereby to every subsequent holder in case of

dishonour of the said hundi by the drawee, acceptor or jikriwala to pay such holder of the hundi the entire amount of the hundi with nakrai shukarai and interest with such other sum, if any, as may be prescribed by the bye-laws of the association, provided a praman patra has been obtained and notice thereof has been given to, or received by, such indorser.

19. *Liability of prior parties to holder in due course.*—Every prior party to a hundi is liable thereon to a holder in due course until the hundi is duly satisfied.

20. *Drawer and acceptor are principal debtors.*—The drawer of a hundi until acceptance, and the acceptor are, in the absence of a contract to the contrary, liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the drawer or the acceptor, as the case may be.

21. *Prior party a principal debtor in respect of each subsequent party.*—As between the parties so liable as sureties each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

22. *Suretyship.*—When the holder of a hundi enters into any contract with the acceptor which, under section 134 or section 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

23. *Discharge of indorser's liability.*—Where the holder of a hundi, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the hundi has been paid at maturity.

24. *Acceptor bound although indorsement forged.*—An acceptor of a hundi already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the hundi.

25. *Acceptance of hundi the name of the drawer whereof is fictitious.*—An acceptor of a hundi payable to the drawer's order is not, by reason that the drawer's name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

26. *Hundi drawn, accepted, indorsed or transferred without consideration.*—A hundi, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation. But if any such party has transferred the hundi with or without indorse-

ment to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such hundi from the transferor for consideration or any prior party thereto.

Exception.—No party to the hundi who has induced any other party to draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon any amount exceeding the value of the consideration, if any, which he actually paid or performed.

27. *Partial absence or failure of money consideration.*—When the consideration for which a person has drawn or indorsed a hundi consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such drawer or indorser entitled to receive from him is proportionately reduced.

Explanation.—The drawer of such a hundi stands in immediate relation with the acceptor as also with the rakhya and the indorser with his indorseees. Other indorsers may by agreement stand in immediate relation with a holder.

28. *Partial failure of consideration not consisting of money.*—Where a part of the consideration for which a person has drawn or indorsed a hundi, though not consisting of money, is ascertainable in money without collateral enquiry, and there is a failure of that part, the sum which a holder standing in immediate relation with such drawer or indorser is entitled to receive from him is proportionately reduced.

CHAPTER V NEGOTIATION

29. *Delivery.*—(1) The drawing, acceptance or indorsement of a hundi is completed by delivery, actual or constructive

(2) As between parties standing in immediate relation, delivery to be effectual must be made by the party drawing, accepting or indorsing the hundi or by a person authorised by him in that behalf.

(3) As between such parties and any holder of the hundi other than a holder in due course, it may be shown that the hundi was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

30. *Negotiation by delivery.*—Subject to the provisions of section 37, a hundi payable to bearer is negotiable by delivery thereof.

Exception.—A hundi delivered on condition that it is not to take effect except in a certain event is not negotiable except in the

hands of a holder in due course without notice of the condition, unless such event happens.

31. *Negotiation by indorsement and delivery.*—Subject to the provisions of section 37, a hundi payable to order is negotiable by the holder by indorsement and delivery thereof.

32. *Effect of indorsement.*—The indorsement on a hundi followed by delivery transfers to the indorsee the property therein with the right of further negotiation, but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the hundi, or to receive its contents for the indorser, or for some other specified person.

33. *Who may negotiate?*—Every holder of a hundi may, if the negotiability of such hundi has not been restricted or excluded as mentioned in section 32, indorse and negotiate the same.

34. *Holder deriving title from holder in due course.*—A holder of a hundi who derives title from a holder in due course has the rights thereon of that holder in due course.

35. *Hundi indorsed in blank.*—A hundi indorsed in blank is payable to the bearer thereof even though originally payable to order.

36. *Indorsement for part of sum due.*—No writing on a hundi is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the hundi.

37. *Lost hundi or hundi obtained by unlawful means or for unlawful consideration.*—When a hundi has been lost or has been obtained from any drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the hundi is entitled to receive the amount due thereon from such drawer, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder in due course.

38. *Hundi acquired after dishonour or when overdue.*—The holder of a hundi, who has acquired it after dishonour, whether by non-acceptance, non-noting or non-payment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Provided that any person who, in good faith and for consideration becomes such holder of a hundi drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the hundi from any prior party.

39. *Hundi negotiable till payment or satisfaction.*—A hundi which has not become stale, or having become stale has been revalidated, may be negotiated until it is discharged by payment or satisfaction.

CHAPTER VI

PRESENTMENT

40. *Maturity of hundi.*—(1) A hundi payable at sight shall become due for payment on the working day succeeding immediately after the date or miti of the hundi.

(2) A hundi payable after the period specified therein shall become due for payment on the working day succeeding immediately the last day of the period specified in the hundi.

41. *Presentment for acceptance and/or payment.*—(1) A hundi payable after the period specified therein must be presented to the drawee thereof for his acceptance within a reasonable time after it is received by the holder.

(2) If the drawee accepts the hundi, he shall indicate the same by giving his assent by his signature on the hundi with the date or miti of such acceptance.

(3) An accepted hundi payable after a specified period mentioned therein shall be presented for payment to the drawee thereof at maturity.

(4) A hundi payable at sight must be presented for noting and payment within a reasonable time after it is received by the holder.

Explanation 1 : If any question arises as to whether the hundi has been presented for payment within a reasonable time or not, the same shall be determined by the association subject to whose bye-laws the hundi has been drawn; but, the reasonable time shall in no case exceed six months from the date of maturity of the hundi.

Explanation 2 : Delay in presentment of a hundi for noting and payment would be excluded in computing the reasonable time if such delay is due to circumstances beyond the control of the holder.

42. (1) *Presentment for acceptance and/or payment.*—Presentment of a hundi for acceptance and/or payment in accordance with section 41 shall be made on any working day during business hours and in other respects shall be in accordance with the bye-laws of the association.

(2) *Revalidation of a stale hundi.*—If, for no fault of the holder, any holder in possession of a hundi after six months from the date of its maturity shall be entitled to obtain from the drawer a revalidation of the hundi and on the drawer writing on the face of the hundi the expression

“revalidated” or any other expression conveying the same meaning, by his signature giving the date or the miti, the holder shall be entitled to present the same for payment within a reasonable time thereafter.

(3) On such presentment, the drawee, or the acceptor, as the case may be, shall make payment of the hundi as per the bye-laws of the association subject to which the hundi has been drawn.

43. *Presentment to agent, legal representative or assignee.*—Presentment for acceptance or noting and payment may be made to the duly authorised agent of the drawee, or the acceptor, as the case may be or where the drawee or the acceptor has died, to his legal representative, or, where he has been adjudged an insolvent, to his assignee.

44. *Keeping a hundi khadi.*—(1) When the drawee or jikriwala, as the case may be, of a hundi which is drawn as payable at sight, does not note or pay the hundi when it is duly presented for payment, and at the same time he does not forthwith indicate his refusal to pay, the hundi is regarded as kept khadi. During the period the hundi is so regarded as khadi, it shall not be regarded as dishonoured for the period it is so kept. The period during which a hundi may be kept khadi shall not exceed three working days from the date or miti of its presentment. After this period, unless the drawee or jikriwala, as the case may be, honours the hundi within the time allowed and in the manner prescribed by the bye-laws of the association, subject to which the hundi has been drawn, prior to the issuing of praman patra, he shall be regarded as having dishonoured the hundi.

(2) For the period the hundi is regarded as khadi under sub-section (1), if the drawee or the jikriwala, as the case may be, honours the same, he is liable to pay, in addition to the amount of the hundi, interest for the khadi period at the rate prescribed by the association subject to which the hundi has been drawn.

CHAPTER VII

PAYMENT AND DISCHARGE FROM LIABILITY

45. *To whom payment should be made.*—Payment of the amount of a hundi must be made to the holder presenting it in order to discharge the drawee or acceptor or jikriwala.

46. *Mode of payment.*—(1) The amount of a hundi shall be paid in cash or currency within the time prescribed by the bye-laws of the association subject to which the hundi has been drawn, unless the hundi specifies that the payment of the amount of the hundi shall be by cheque.

(2) If the amount of a hundi is paid by a cheque, the cheque shall be drawn on a bank in the place where the hundi is payable and shall be

issued within the time prescribed by the bye-laws of the association subject to which the hundi has been drawn. When the payment of a hundi is made by a cheque, the hundi shall only be deemed to have been duly discharged for all purposes when the cheque is honoured by the bank and the amount is credited to the account of the recipient. In the event of the cheque being dishonoured, the hundi shall be deemed to be unpaid.

47. *Discharge of hundi by Payment.*—On receiving payment of the amount of the hundi, the person receiving the payment shall discharge it by acknowledging payment on the back of the hundi from the drawee the acceptor or the jikriwala from whom the payment has been received, put the date or miti of such receipt and sign it and deliver the khokha to the person who makes the payment. Where the amount of the hundi is paid by a cheque, the drawee, acceptor or jikriwala may obtain from the holder presenting the hundi a receipt, if the bye-laws of the association subject to which the hundi has been drawn so permits, stating that the hundi is paid by the cheque, giving full particulars thereof and also stating that hundi will become a khokha on the realisation of the cheque.

48. *Discharge from liability.*—The acceptor or indorser respectively of a hundi is discharged from liability thereon—

- (a) to holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;
- (b) to a holder thereof who otherwise discharges such acceptor or indorser and to all parties deriving title under such holder after notice of such discharge.

49. *Discharge by allowing drawee more time.*—(i) When the holder of a hundi payable at sight waits for more than a reasonable time after the expiry of its khadi period; or
- (ii) When the holder of a hundi payable after a specified period mentioned therein, does not, within a reasonable time after it is received by the holder, present it to the drawee thereof for his accepting if for payment, or does not on its due date present it to the acceptor for payment in cases where such presentment for payment is necessary under the provisions of this Act,

all previous parties not consenting to any of the defaults mentioned above are thereby discharged from liability to such holder.

50. *Effect of material alteration.*—Any material alteration of a hundi renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless

it was made in order to carry out the common intention of the original parties and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

51. Parties not consenting discharged by qualified or limited acceptance.—If the holder of a hundi acquiesces in a qualified acceptance or which is not signed by the drawee or jikriwla, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An Acceptance is qualified—

(a) Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) Where it undertakes the payment of part only of the sum ordered to be paid; or

(c) where it undertakes the payment at a time or place other than that at which the hundi would be otherwise legally due for payment.

52. Acceptor or indorser bound notwithstanding previous alteration of the hundi.—An acceptor or indorser of a hundi is bound by his acceptance or indorsement notwithstanding any previous alteration of the hundi.

53. Payment as per apparent tenor.—Where a hundi has been materially altered but does not appear to have been so altered, payment thereof by a person liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course shall discharge such person from all liability thereto, and such payment shall not be questioned by reason of the hundi having been altered.

54. Other parties' liability on alteration.—Every indorser of a hundi is liable to his indorsee who is a holder in due course, as per the apparent tenor thereof at the time of such indorsement. Parties to a hundi who have taken the hundi before any material alteration thereon are bound according to the terms of the original tenor of the hundi.

55. Extinguishment of rights on hundi in acceptor's hands.—If a hundi which is not payable at sight and which has been negotiated is at or after maturity held by the acceptor in his own right, all rights thereon are extinguished.

CHAPTER VIII

DISHONOUR OF HUNDIS

56. *When hundi deemed to be dishonoured.*—No presentment for acceptance or payment of a hundi is necessary and the hundi shall be deemed to have been dishonoured if—

(i) the drawee, acceptor or jikriwala, as the case may be, prevents presentment of the hundi, or

(ii) the drawee, acceptor or jikriwala, as the case may be, cannot be found, or

(iii) the drawee, acceptor or jikriwala, as the case may be, is not available at the address mentioned in the hundi during business hours on working day, or

(iv) the drawee or jikriwala refuses to accept it for payment or refuses to note the presentment of the hundi for payment.

57. *Dishonour by non-acceptance.*—(1) A hundi is said to be dishonoured by non-acceptance when the drawee, or one of several jikriwalas, makes default in accepting it when required to do so, or where presentment is excused and the hundi is not accepted.

(2) Where the acceptance is qualified, the hundi may be treated as dishonoured.

58. *Dishonour by non-payment.*—A hundi is said to be dishonoured by non-payment when the drawee of the hundi makes a default in noting and the acceptor of the hundi defaults in making payment.

59. *Notice of dishonour in writing.*—(1) When a hundi is dishonoured by non-acceptance, non-noting or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice, in writing, to be delivered either by hand or by a registered post, that the hundi has been so dishonoured to all other parties whom he seeks to make severally liable thereon, and to someone of several parties who he seeks to make jointly liable thereon and the notice may be in any form, but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the hundi has been dishonoured and stating how it has been dishonoured, and that such party will be held liable thereon; it must be given within a reasonable time after dishonour at the place of business or, in case such party has no place of business, at the residence of the party for whom it is intended.

(2) If the notice is sent by registered post and miscarried, such miscarriage does not render the notice invalid.

(3) Nothing in this section renders it necessary to give notice to drawee or the acceptor of dishonoured hundi.

60. *Notice may be given to agent.*—Notice of dishonour may be given in writing, to be delivered either by hand or by a registered post, when necessary, to a duly authorised agent of the person to whom it is required to be given, or, when he has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

61. *Notice of dishonour to prior parties.*—Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives notice.

62. *Notice to agent for presentment.*—When the hundi is deposited with an agent for presentment, the agent is entitled at the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

63. *When party to whom notice is given is dead.*—When a party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

64. *When notice of dishonour is unnecessary.*—No notice of dishonour is necessary :

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a namjog hundi;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the hundi.

65. *Report of dishonour and praman patra.*—(1) When a hundi has been dishonoured by non-acceptance, non-noting or non-payment, the holder may, as expeditiously thereafter as possible, report the matter to the association subject to whose bye-laws the hundi has been drawn, in the form prescribed by the bye-laws of that association.

(2) On receipt of such report and payment of such fee to the association as may be prescribed for the purpose, the association shall, with all expedition as is reasonably possible, enquire of the drawee,

acceptor and/or jikriwala, as the case may be, his reason for the dishonour and note the reasons, if any, and issue praman patra to the holder presenting the hundi as per its bye-laws.

CHAPTER IX

SPECIAL RULES OF EVIDENCE

66. *Presumptions.*—Until the contrary is proved, the following presumptions shall be made :

(a) that every hundi was drawn for consideration , and that every such hundi when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) that every hundi bearing a date or miti was drawn on such date or miti;

(c) that every accepted hundi was accepted within a reasonable time after its date or miti and before its maturity;

(d) that the indorsements appearing upon a hundi were made in the order in which they appear thereon,

(e) if no date or miti of acceptance is found on a hundi, the date or miti of the hundi would be presumed to be the date or miti of the acceptance of the hundi; and

(f) unless proved to the contrary, the signatures on the hundi would be deemed to be by the persons entitled to make such signatures.

67. *Presumption as to dishonour of hundi.*—In any proceeding upon a hundi, the factum of the same having been dishonoured shall be presumed on proof thereof by the praman patra issued by the association subject to whose bye-laws the hundi has been drawn.

68. *Estoppel against denying original validity of hundi.*—No drawer of a hundi shall in any proceeding thereon by a holder in due course be permitted to deny the validity of the hundi as originally drawn.

69. *Estoppel against acceptor or drawee noting.*—No acceptor, or drawee who has noted on a hundi payable to order, shall, in any proceeding thereon by a holder in due course, be permitted to deny the rakhya's capacity, at the date of the hundi, to indorse the same.

70. *Estoppel against denying signature or capacity of prior party.*—No indorser of a hundi shall, in any proceeding thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the hundi.

CHAPTER X

HUNDIS WITH SPECIAL FEATURES

71. *Bilti hundis*.—(1) When the drawer of a hundi intends that the hundi is to be accompanied by a document or documents of title to goods and that the amount of the hundi should be paid only against delivery of such document or documents, a statement to that effect shall be made on the hundi itself. Such a hundi shall be called a “bilti hundi”.

(2) In the case of such a hundi, the acceptance or noting of the hundi for payment shall be conditional on the hundi being presented for payment along with the document or documents mentioned in the hundi.

(3) Payment of the amount of the hundi shall be made only if the person demanding such payment hands over such document or documents duly indorsed in favour of the drawee or the jikriwala who makes such payment.

72. *Nishani wali hundis*.—(1) “Nishaniwali hundi” is a hundi which either states the name of a person who may be a buyer of the goods on whose account the drawer wants the drawee to honour the hundi, or states the account which the drawee is to debit for honouring the hundi. Such specified person or the holder of such account shall be regarded as the “nishaniwals”.

(2) The nishaniwala shall be entitled at any time before the drawee pays the amount of the hundi to direct the drawee not to pay the amount of the hundi or to pay only a specified amount which may be lesser than the amount of the hundi. The nishaniwala shall normally give such direction in writing signed by him. In cases of urgency, the nishaniwala may give such direction to the drawee orally or by a telegram and on receipt of such oral or telegraphic direction, the drawee shall withhold payment of the amount of the hundi. The nishaniwala must subsequently confirm his oral direction, in writing, signed by him. The drawee shall act in accordance with the direction given by the nishaniwala, in writing, signed by him.

(3) When no amount or only an amount lesser than the amount of the hundi has been so paid, the rights and liabilities, if any, which may thereby arise shall be only as between the drawer of the nishaniwali hundi and the nishaniwala.

73. *Namjog hundis*.—(1) A “namjog hundi” is a hundi drawn as payable only to the person named therein.

(2) A namjog hundi cannot be negotiated by indorsement, provided howevre that it may be indorsed only for the purpose of realisation or for collection.

(3) Subject to sub-section (2), the drawee shall pay the amount of a namjog hundi to the person named therein and to nobody else.

(4) The drawee of a namjog hundi shall not be responsible for payment on a namjog hundi to any person other than the person named in the hundi or to such person's indorsee for realisation or for collection.

74. *Shahjog hundis*.—(1) A shahjog hundi is a hundi which at the time of its drawal contains a statement that it is a shahjog hundi and bears across its face two parallel transverse lines authenticated by the drawer under his signature and date or miti.

(2) The drawee, acceptor or jikriwala, as the case may be, of a shahjog hundi shall, in making payment thereof, ensure that the holder presenting the hundi and receiving payment of the hundi is a "shah".

(3) Any person receiving payment under a shahjog hundi shall be liable to refund to the drawee the amount paid on the hundi, together with interest thereon at the rate prescribed by the bye-laws of the association subject to which the hundi is drawn, if the hundi turns out to be a false, fraudulent, stolen or forged hundi :

"Provided that the person receiving payment on such a hundi shall not be so liable if the drawee fails to give him notice within a reasonably expeditious time of the discovery of such falsehood, fraud, theft or forgery and of his intention to claim a refund of such amount.

CHAPTER XI

PAYMENT AND COLLECTION OF HUNDIS BY SHROFFS

75. *Payment of hundi through shroff*.—Any hundi, bearing the expression "payable through shroff", shall be paid only through a shroff.

76. *Hundi payable to order*.—Where a hundi is drawn payable to or to the order of the rakhya and purports to be indorsed by or on behalf of the rakhya or any subsequent holder thereof, the shroff is discharged when he makes payment thereof in due course.

77. *Shroff receiving payment on a hundi*.—Notwithstanding anything contained in section 74, a shroff who has in good faith and without negligence received payment of a hundi bearing the expression "payable through shroff" for his customer shall not, in case the title

to the hundi proves defective, incur any liability to the true owner of the hundi by reason only of having received such payment.

Explanation.—A shroff receives payment of a hundi bearing the expression “payable through shroff” for a customer within the meaning of this section notwithstanding that he credits his customer’s account with the amount of the hundi before receiving payment thereof.

78. *Associations may publish lists of shroffs.*—An association, subject to whose bye-laws a hundi is drawn may publish from time to time lists of its members whom it regards as shroffs; such determination by the association shall be final for the purposes of this Chapter and shall not be called in question in any court of law.

CHAPTER XII

ISSUE OF MAJARENAMA

79. (1) Any dispute relating to hundis and/or arising therefrom and/or in any way concerning thereto shall be decided by the association subject to whose bye-laws the hundi is drawn. The decision of the association concerning any such dispute shall be known as “majarenama”. The association may call upon the parties to any such dispute to pay the association such fees as it may prescribe by its bye-laws for determining any such dispute and issuing a majarenama.

(2) The association shall have the powers to summon parties, ask for the production of documents and be competent to exercise all such powers as are conferred on an arbitrator duly appointed under the Arbitration Act, 1940. However, it shall not be necessary for the association to adhere strictly to the procedures prescribed under the Arbitration Act, 1940, in dealing with any such disputes.

(3) The majarenama of the association concerning any such dispute shall be final and binding on the parties.

(4) The majarenama of the association shall have the force of an award under the Arbitration Act, 1940, and shall be capable of being executed in the manner provided under that Act.

(5) The association may, for the purpose of enquiring into such dispute, appoint arbitrators out of a panel of arbitrators maintained for the purpose by the association.

(6) The majarenama shall not attract any stamp duty but in other respects it shall be drawn up in the form in which an award is required to be drawn up under the Arbitration Act, 1940.

CHAPTER XIII

MISCELLANEOUS

80. *Holiday*.—The association shall declare before the commencement of every calendar year the days which are to be treated as holidays with reference to hundis drawn subject to its bye-laws, for the purpose of their presentment for acceptance and/or noting and payment. Besides the holidays so declared, the association may also declare such other days which shall be regarded as holidays for this purpose. Days declared as holidays under section 25 of the Negotiable Instruments Act, 1881, shall be deemed to be holidays declared by the association.

81. *Business hours*.—The association shall declare from time to time the business hours during which presentment of hundis for the purpose of acceptance and/or noting and payment shall be made on any working day with reference to hundis drawn subject to its bye-laws.

82. *Bye-laws of the association*.—The association shall make bye-laws which are not inconsistent with the provisions of this Act and which may provide for—

(i) the manner in which a hundi drawn subject to its bye-laws may be presented for acceptance and/or noting and payment,

(ii) the procedure to be followed for accepting, noting or making payment with reference to hundis,

(iii) to prescribe the time within which the payment of a hundi shall be made in cash or currency or by cheque,

(iv) the procedure to be followed for issuing praman patra and the fees to be paid therefor,

(v) the detailed procedure for giving majarenama, including the fees to be paid for starting any proceeding for the issue of a majarenama, in accordance with the provisions of this Act, and

(vi) the matters which are incidental or consequential to the provisions of this Act concerning hundis which are drawn subject to the bye-laws of the association.

83. *Rates of interest*.—The association shall declare from time to time the rates at which interest shall be payable on hundis—

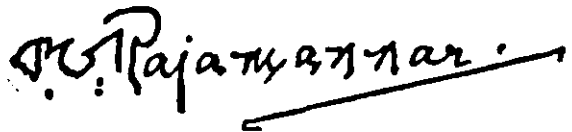
(i) during the khadi period,

(ii) in case of dishonour of hundis, and

(iii) when the payment received on a shahjog hundi has to be refunded to the drawee in accordance with section 74.

84. *Nakrai shikarai*.—The compensation payable as nakrai shikarai under this Act with reference to a hundi shall be determined at the fourth of a per cent of the amount of the hundi, along with interest per the byo-laws of the association subject to which the hundi has been drawn, from the date of the drawal of the hundi. en

85. *Stamp duty*.—Notwithstanding any law for the time being in force, a hundi shall not be liable to any stamp duty. in



(P. V. RAJAMANNAR)
CHAIRMAN



(R. KRISHNAN)
SECRETARY

MADRAS,
26th September, 1978.

ANNEXURES

ANNEXURE 1

BANKING LAWS COMMITTEE

(Government of India)

*QUESTIONNAIRE ON INDIGENOUS NEGOTIABLE INSTRUMENTS
(HUNDIS)

@PART 6—INDIGENOUS NEGOTIABLE INSTRUMENTS (HUNDIS)

Group 1—General

6.1.1 The Select Committee which went into the Negotiable Instruments Bill in 1879 had observed :

"Any sudden abolition of the numerous local usages (there is no general custom) as to hundis, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction but we believe that the effect of the Bill, if passed with the saving of the local usages in question, will be not to stereotype and perpetuate these usages, but to induce the native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity on mercantile usages will thus be brought about without any risk of causing hardship to native bankers and merchants. How long this change will take is of course impossible to prophesy."

However, the Select Committee's expectation has been belied and our businessmen still continue to stick to the "bewildering usages governing these instruments" Hence, what measures you would suggest for the fulfilment of the above expectation of the Select Committee ?

Group 2—Instruments in oriental language

6.2.1 Local usages in relation to a negotiable instrument in any oriental language are at present saved, though they are inconsistent with the provisions of the NIA,† unless an intention that the legal relations of the parties shall be governed by that Act is indicated in the instrument. It has been suggested that in respect of any instrument falling within the definition of "negotiable instrument" under that Act, any usage contrary to its provisions should not be applicable. Do you agree ?

Group 3—Discontinuance of hundis

6.3.1 It would be a great advance towards securing uniformity of the law if all instruments could be brought under the Negotiable Instruments Act. Hence, a suggestion has been made to provide by law for the discontinuance of indigenous

*The questionnaire was originally issued by the Banking Commission's Study Group which reviewed legislation affecting banking.

@Parts 5, 11, 12 and 18 to 21 of the questionnaire relate to other branches of laws under review by the Banking Laws Committee. Parts 7 to 10 of the questionnaire relate to the Revision of the Negotiable Instruments Law, on which the Committee has already submitted its Report to the Government of India in February 1975. Parts 13 to 17 of the questionnaire relate to review of laws concerning loans and advances against movable and immovable property including fixtures, on which the Committee has submitted its Reports to the Government in October, 1977.

†Negotiable Instruments Act, 1881.

negotiable instruments not coming within the scope of the Negotiable Instruments Act after the expiry of a specified period. Do you agree? If so, please specify the period on the expiry of which such instruments could be discontinued.

6.3.2 A view has been expressed that the use of hundis should not be prevented so long as we are not in a position to have an efficient bank in each village. In view of the recent developments and the aim of the banking system now to reach, if not each village, at least each group of villages, do you think that the time is ripe for considering the abolition of indigenous negotiable instruments not coming within the scope of the Negotiable Instruments Act?

Group 4—Continuance of hundis

6.4.1 If you do not favour the discontinuance of hundis, do you prefer the codification of their peculiar incidents and usages? If you favour such codification, are you in favour of bringing them under the Negotiable Instruments Act or would you suggest a separate enactment in this behalf?

Group 5—Forms of hundis

6.5.1 The following types of hundis have been referred to :

- (1) Darshani Hundi
- (2) Dhani Jog Hundi
- (3) Shah Jog Hundi
- (4) Dekhanhar Hundi
- (5) Muddati Hundi
- (6) Firman Jog Hundi
- (7) Jokhmi Hundi
- (8) Jawabi Hundi
- (9) Nam Jog Hundi
- (10) Nishan Jog Hundi

Is there any other type of indigenous negotiable instrument you have come across?

6.5.2 Could you kindly procure for us specimen copies (with English translation) of the types of indigenous negotiable instruments you are familiar with?

6.5.3 Are all the types of hundis referred to still in use? Or, have any of them fallen into disuse? If so, please name them.

6.5.4 Is any type of hundi popularly associated only with any particular group of indigenous bankers or financiers? If so, please indicate.

Group 6—Terms of hundis

6.6.1 Please give the usual terms of, usages and incidents applicable to, the different kinds of indigenous negotiable instruments.

6.6.2 Are there any characteristics or incidents which are common to the indigenous negotiable instruments in general? If so, please specify them.

6.6.3 Do you consider that all the usages and incidents now applicable to the different types of indigenous negotiable instruments could be given legal recognition or that any of them should not be given legal sanction as opposed to any principle of law or public policy?

6.6.4 Can all the different types of indigenous negotiable instruments be regarded as containing "unconditional orders" to pay? Please give your views with reference to each type of instrument, with reasons.

6.6.5 Do hundis specify the rate of interest payable thereon ? If not, do you think it desirable to provide for the rate of interest payable on them on the lines of Section 80 of the NIA ?

6.6.6 Are any amounts other than the principal and interest payable on the instrument ? If so, what are they and under what circumstances they are payable ?

6.6.7 How are the different types of hundis negotiated ? Is it by endorsement and delivery or by mere delivery ? Please reply with reference to each type of hundi.

6.6.8 Are hundis drawn in sets ? If so, how are they done and under what circumstances ?

6.6.9 Do you consider that all the provisions of the NIA should be made applicable to hundis ? If not, please indicate the provisions which you consider should not be applied to hundis.

6.6.10 With respect to each type of indigenous negotiable instrument, please indicate whether you consider any practice, usage or incident should be prohibited or rendered invalid.

ANNEXURE 2

LIST OF INSTITUTIONS AND INDIVIDUALS TO WHOM QUESTIONNAIRE IN ENGLISH/HINDI WAS SENT

- (1) Concerned Departments of the Government of India
- (2) Departments of State Governments and Union Territories
- (3) Law Commission of India
- (4) Registrars of Companies
- (5) Registrars of Co-operative Societies
- (6) All Scheduled and non-Scheduled Commercial Banks
- (7) All State Co-operative Banks
- (8) Selected Urban and District Central Co-operative Banks
- (9) Industrial Development Bank of India, Industrial Finance Corporation, Industrial Reconstruction Corporation of India Ltd., Industrial Credit and Investment Corporation of India Ltd., State Financial Corporations, Life Insurance Corporation of India and such other financial corporations
- (10) Indian Banks' Association
- (11) Foreign Exchange Dealers' Association
- (12) All India State Co-operative Banks' Federation
- (13) All India Institute of Chartered Accountants and their regional association
- (14) Bar Council of India
- (15) Bar Association of India
- (16) Supreme Court Bar Association
- (17) State Bar Councils
- (18) Bar Associations of High Courts
- (19) All District Bar Associations
- (20) Federation of Indian Chambers of Commerce and Industry
- (21) Indian Merchants' Chamber, Bombay
- (22) Chambers of Commerce in various States and Union Territories
- (23) Stock Exchanges
- (24) Merchants' Associations in various States and Union Territories
- (25) Manufacturers' Associations and other producers' associations in various States and the Union Territory of Delhi
- (26) Educational and Training Institutions
- (27) University Law Departments
- (28) Foreign Central Banks and Foreign Experts
- (29) Senior and Middle Level Executives of Reserve Bank of India and its Associate Institutions, and of commercial banks
- (30) Specified individuals including those who have requested for copies of the Terms of Reference/Questionnaire
- (31) Indigenous Bankers' Associations

ANNEXURE 3

LIST OF INSTITUTIONS AND INDIVIDUALS WHO ANSWERED THE QUESTIONNAIRE (INCLUDING THE HINDI VERSION) OR SUBMITTED MEMORANDA re : HUNDIS

I Banks

(A) *Nationalised Banks*

Allahabad Bank
Bank of Baroda
Bank of India
Canara Bank
Indian Bank
Indian Overseas Bank
Punjab National Bank
Syndicate Bank
United Commercial Bank
Union Bank of India
State Bank of Indore
State Bank of Mysore
State Bank of Travancore

(B) *Foreign Banks*

Chartered Bank
First National City Bank
General Bank of the Netherlands
Grindlays Bank Ltd.

(C) *Co-operative Banks*

Andhra Pradesh State Co-operative Bank Ltd.
Gandhi Co-operative Urban Bank Ltd., Vjaywada
Gujarat State Co-operative Bank Ltd.
Himachal Pradesh State Co-operative Bank Ltd.
Nicholson Co-operative Town Bank Ltd., Thanjavur
Shree Bharat Co-operative Bank Ltd., Baroda

(D) *Other Banks*

Belgaum Bank Ltd.
Bank of Karad Ltd.
Bank of Madura Ltd.
Benaras State Bank Ltd.

Corporation Bank Ltd.
 Dhanalakshmi Bank Ltd.
 Federal Bank Ltd.
 Hindustan Mercantile Bank Ltd.
 Jammu & Kashmir Bank Ltd.
 Kumbakonam City Union Bank Ltd.
 Nainital Bank Ltd.
 New Bank of India Ltd.
 Tanjore Permanent Bank Ltd.
 Vysya Bank Ltd.

II. State Trading Corporation

III. State and Other Allied Financial Institutions

Assam Financial Corporation, Shillong
 Gujarat State Financial Corporation, Ahmedabad

IV. Law Associations

Andhra Pradesh High Court Advocates' Association, Hyderabad
 Bombay Incorporated Law Society, Bombay
 Indian Law Institute, through Shri D.C. Pande, Associate Research Professor
 Madura Bar Association, Madurai

V. Indigenous Bankers' Associations, Chambers of Commerce and Industry, Merchants Associations, etc.

Ahmedabad Shroffs Association, Ahmedabad
 Bengal National Chamber of Commerce and Industry, Calcutta
 Bharat Chamber of Commerce, Calcutta
 Bombay Shroffs Association, Bombay
 Calcutta Kirana (Spices) Merchants' Association, Calcutta.
 Federation of Indian Manufacturers, New Delhi
 Hindustan Chamber of Commerce, Bombay
 Madhya Pradesh Chamber of Commerce and Industry, Gwalior
 Madras Stock Exchange, Madras
 Madura Ramnad Chamber of Commerce, Madurai
 Merchants' Chamber of Commerce, Calcutta
 Nagvidarbha Chamber of Commerce, Nagpur
 Shikarpuri Shroffs Association, Bombay
 Sindhi (Multani) Bankers' Association, Madras
 Southern Gujarat Chamber of Commerce and Industry, Surat

VI. Government

The Registrar of Co-operative Societies, Goa, Daman & Diu, Panaji
 The Secretary to the Government, Finance Department, Government of Gujarat,
 Gandhinagar

The Registrar of Co-operative Societies, Government of Himachal Pradesh, Simla.

The Registrar of Co-operative Societies, Government of Mysore, Bangalore

The Secretary to the Government, Law Department, Government of Tripura, Tripura.

The Secretary to the Government, Finance Department, Government of West Bengal, Calcutta.

VII. Educational and Training Institutions

Indian Council of Economic Affairs, Calcutta

Indian Institute of Economics, Hyderabad

VIII. Firms

Messrs. Balakram Dwarkadas, Ambala

Messrs. Bhura Brothers, Silchar

Messrs. Chimanlal Premchand, Bombay

Messrs. Hariprasad Ratilal Shroff, Rajpipla (Broach)

Messrs. Harjivandas Khushaldas Parikh, Kapadwanj

Messrs. Lallubhai Sakeral Desai and Company, Bombay

Messrs. Nanalal H. Shah, Miyagam Karjan

Messrs. Nandramdas Kanayalal and Sons, Calcutta

Messrs. Ochhavlal Sakeral Dharra, Bombay

Messrs. Ochiram Parmanand, Madras

Messrs. Purshottamdas Chunilal Parikh, Mehmadaabad

Messrs. Ramnarayan Mohanlal and Company, Dhekiajuli, Distt. Darrang

Messrs. Rikhabchand Sohanlal, Tezpur

Messrs. Shah Jaykisondas Jagjivandas, Bombay

Messrs. Shah Punamchand Devchand, Broach

Messrs. Virchand Narshi, Malkapur

IX. Individuals

Shri Bajpayee Biswanatha, New Delhi

Shri Banerjee P.G., Manager, State Bank of India, Calcutta

Shri Bhaskaran Nair P., Syndicate Bank, Lakshdweep

Shri Bhat K. G., Syndicate Bank, Visakhapatnam

Shri Bhat M. V., Vijaya Bank Ltd., Bangalore

Shri Gandhi C.T., Calcutta

Shri Gujarathi N. G., Agent, Central Bank of India, Poona

Shri Gupta T. R., United Commercial Bank, Moga

Shri Hussain K. M., State Bank of Mysore, Bangalore

Shri Joshi G. S., Manager, State Bank of Mysore, Malavalli

Shri Kaka P. N., Central Bank of India, Pune

Shri Kakkar S. N., Manager, Allahabad Bank, Fatehpur

- Shri Kanchan D.T., Manager, Syndicate Bank, Guntur
- Shri Karuppanchetty M.R., Joint Chief Officer, Department of Banking Operations and Development, Reserve Bank of India, Calcutta.
- Shri Keshava Ammanayya, Panja (Karnataka)
- Shri Mahadev S. M., State Bank of Mysore, Bangalore
- Shri Madhusudan Rao P., Syndicate Bank, Manipal
- Shri Mathur P. S., State Bank of Bikaner & Jaipur, Bharatpur
- Shri Mediratta D. R., State Bank of Bikaner & Jaipur, Bikaner
- Shri Mehta K. C., Bank of Baroda, Ahmedabad
- Shri Mittal S. R., Chartered Accountant, Ludhiana
- Shri Nanjappa K. M., Coorg
- Shri Narasimha Murthy T., State Bank of India, Avaniigadda
- Shri Narayana Murthy P., State Bank of Mysore, Bangalore
- Shri Naronha B., Manager, Syndicate Bank, Carangalam (Goa)
- Shri Nayak V. V., Manager, Syndicate Bank, Mysore
- Shri Noronha E.G., Deputy Chief Officer, Department of Banking Operations and Development, Reserve Bank of India, Ahmedabad.
- Shri Padhye P. Y., Member of Faculty, Staff Training College, Reserve Bank of India, Madras.
- Shri Patra B. C., State Bank of India, Calcutta
- Shri Ramakrishnan V., Instructor, Staff College, Indian Overseas Bank, Madras
- Shri Sengupta C. R., Manager, Industrial Development Bank of India, Calcutta
- Shri Shah B. G., Bodeli
- Shri Shah R. A., Cambay
- Shri Shetty B. B., Syndicate Bank, Manipal
- Shri Shingde B. S., Manager, Syndicate Bank, Pune
- Shri Sreeramachandramurthy K., State Bank of Mysore, Bangalore
- Shri Subramanian A., Staff Training Centre, State Bank of Hyderabad, Aurangabad.
- Shri Suryanarayanan P. S., Manager, State Bank of Hyderabad, Nanded
- Shri Thatham M. S. V., Madras
- Shri Venkatachari S., Principal, Staff College, Indian Overseas Bank, Madras
- Shri Venkata Ramanan K., State Bank of Mysore, Bangalore
- Shri Venkoba Rao K., Advocate, Madras
- Shri Vishwanatha Aiyer T. V., Senior Advocate and President, Revenue Bar Association, Madras.

ANNEXURE 4

**LIST OF INSTITUTIONS WITH WHICH THE BANKING LAWS COMMITTEE
HAD DISCUSSIONS RE : CODIFICATION OF HINDI PRACTICES
AND USAGES**

- (1) Indian Banks' Association, Calcutta Local Centre, Calcutta
- (2) Indian Chamber of Commerce, Calcutta
- (3) Tea Association of India, Calcutta
- (4) Merchants' Chamber of Commerce, Calcutta
- (5) Bharat Chamber of Commerce, Calcutta
- (6) Indian Tea Association, Calcutta
- (7) Bengal National Chamber of Commerce and Industry, Calcutta
- (8) Bombay Shroffs Association, Bombay
- (9) Hindustan Chamber of Commerce, Bombay
- (10) Bharat Merchants' Chamber, Bombay
- (11) Western India Chamber of Commerce Ltd., Bombay
- (12) Grain, Rice and Oilseeds Merchants' Association, Bombay
- (13) The Gujarat Federation of Shroffs
- (14) The Ahmedabad Shroffs Association
- (15) The Vadodara Jilla Shroffs Association
- (16) The Kheda Jilla Shroffs Association
- (17) The Mehsana Jilla Shroffs Association
- (18) The Nadiad Shroffs Association
- (19) The Anand Shroffs Association
- (20) The Petlad Shroffs Association
- (21) The Cambay Shroffs Association
- (22) The Borsad Shroffs Association

ANNEXURE 5

SPEECH OF DR. P. V. RAJAMANNAR, CHAIRMAN, BANKING LAWS COMMITTEE, AT THE FOURTH ALL-INDIA SHROFFS CONFERENCE HELD IN BOMBAY ON THE 10TH SEPTEMBER, 1976.

DISTINGUISHED GUESTS AND FRIENDS,

I greatly appreciate the invitation extended to me to address the All-India Shroffs Conference convened with the main objective of considering proposals for submission to the Banking Laws Committee, for the codification of the practices and usages relating to indigenous negotiable instruments, *i.e.*, Hundis. The Banking Laws Committee is currently engaged in the work relating to this topic of codification and any suggestions made at this important assembly, which would help to aid in its work, would be highly welcome.

2. The hundi is the oldest surviving form of indigenous negotiable instrument in this country. It has been the main credit instrument when there was no regular banking system. Time honoured customs and usages have developed regarding the issue, circulation and the discharge of hundis. During the time of drafting and enacting the Negotiable Instruments Act, 1881, one of the major topics of discussion was about the treatment to be given to Hundis.

3. In that formative period relating to the codification of commercial laws when the general attempt was to base laws applicable to India on the lines and canons of jurisprudence based on the system obtaining in Great Britain, the question which was agitating those responsible for drafting was whether to abolish the hundi system, or to allow it to survive outside the framework of the codified law. There was a strong body of opinion on the one hand that both the institutions, Indian and European, should be assimilated at once, while on the other hand there were some persons who advocated the total exclusion of hundis from any part of the measure. But the Legislature eventually adopted a *via media* in saving local usages from the operation of the Act at the same time providing that such local usages may be excluded by any special provisions in the instrument. The Select Committee pointed out that while the one main principle of Indian codification was to reconcile and assimilate, as far as possible, the Native and European law on each subject, this principle must be applied so as to produce as little friction as possible and that any sudden abolition of the numerous local usages as to hundis, uncertain and undefined as they often were, would cause much and justifiable dissatisfaction among native bankers and merchants in certain parts of the country. So, it is that Section 1 of the Negotiable Instruments Act of 1881 saves the local usages governing indigenous negotiable instruments in vernacular languages. It was believed that the effect of the Act would be to induce the native mercantile community gradually to discard them for the corresponding rules contained in the Act. As pointed out by the Law Commission in its Report in 1958, though over three quarters of a century had passed the practice of the local community has belied the expectation of the Select Committee. The option contained in the saving clause does not appear to have been availed of by our businessmen. Later, the Law Commission observed "that hundis and the shroffs who finance commercial transactions through hundis do a very useful service over the larger part of the country, particularly in the villages". The usefulness of a hundi in our financial structure has to be seen by the advantage it gave to the numerous small traders, merchants and retailers and such other small business people in the cities and villages of our country. By having recourse to hundis, the small businessman was having a decided advantage in settling his claim. In case of dishonour, the ser-

vices of the local sharafi association were available to him and the credibility attached to hundis has also been throughout quite high. This has enabled small business people to make commercial payments by relying on the hundis.

4. But in course of time divergencies have developed if not on matters of substance, but on several aspects relating to hundi business which come in the way of hundi system continuing to play effectively its role as a reliable credit instrument for the remittance of funds and adjustment of financial obligations. Again, the several sharafi associations have not been fulfilling their role with reference to hundis in a co-ordinated fashion. This has led to deficiencies in the system which would be remedied only by codification of the practices and usages relating to hundis.

5. The sharafi associations have been playing a leading role in the settlement of disputes relating to hundis. This is a feature found in common among all the leading sharafi associations of this country. The Banking Laws Committee has noticed this feature in the role of the associations concerned with the hundi business in the different regions of this country. This is not a matter of recent development but has been a time-honoured custom. L.C. Jain, in his book on hundis, referring to the role of Bombay Sharafi Associations, the Marwari Chambers of Commerce, the Commission Agents' Association and the Multani Bankers' Association says,

"These guilds are of ancient origin. Though a great portion of their activities are concerned with various religious and social matters affecting their members, they also settle trade disputes and often function as insolvency courts. Their constitution is quite simple. . . . Decisions are arrived at on democratic principles. These associations have another field of useful activity in which they are daily engaged. From day to day, they dispose of many disputes among their members, which would otherwise have recourse to law courts. The Bombay Shroffs Association alone, it is understood, settle on an average 20 to 25 disputes per day. They have printed forms on which points of differences are noted down, together with the names of parties at variance. The Secretary of the Association then investigates the matter and writes down his award, which is usually accepted by both parties. In the event of their taking the case into court, which rarely happens, there is little chance of obtaining a reversal of the award, for it is arrived at after careful scrutiny, as a result of personal knowledge and inquiry".

Such a role has also been played by the Associations in the South, particularly among the Nattukottai Chettiars. The Sharafi Associations thus have a useful economic function and regulate transactions with reference to hundis. They have been providing, expeditious and inexpensive forums for settling disputes with reference to hundis. Since we know the pressure of work in our courts and the inevitable delay that ensues in spite of our best efforts to reduce delays in settling commercial causes, it is in public interest that this role of sharafi associations is preserved and strengthened while codifying the hundi practices and usages.

6. As part of the new economic programme, ushered in by our esteemed Prime Minister, the main trust is to help the small businessman and small entrepreneur. Codification of the hundi rules and the preservation on a statutory basis of the role of the sharafi associations with reference to hundis should considerably help the small business people. This would help in the speedier implementation of the new economic programme.

7. While the Banking Laws Committee sees considerable force in the recommendation of the Banking Commission (we are fortunate to have with us today the Chairman of the Commission) for the codification of the practices and usages relating to hundis and the merit in Government's acceptance of this recommendation resulting in the Committee being asked, *inter alia*, to go into this subject, the Committee would

not like to comment at this stage on the specific proposals for the codification of the practices as to hundis. But the Committee would give its utmost consideration to any considered proposal that would emerge as a result of the deliberations of this All-India Shroff's Conference. The Committee is happy that this Conference would set up an apex body which will be a representative All-India body and which could discuss with the Committee the various aspects of the proposals for codification so that we could consider legislation which would be applicable throughout the country and cover all hundi transactions.

8. In convening the Conference, the Sharafi Association are taking a positive and progressive step and are affirming the crucial role they have been playing for the preservation of the hundi system. It is a sign of health in the Hundi system that the sharafi associations have voluntarily come forward to help in the process of codification. I wish your Conference all success and hope that your deliberations would considerably facilitate the Banking Laws Committee's work relating to Hundis. I am also happy that in this work, you have associated competent men like Shri N. A. Mody, former Acting Chief Justice of Maharashtra, and other knowledgeable people in the field. Their association should considerably help to crystallise the proposals for codification.

THANK YOU.

ANNEXURE 6

SHARAFI ASSOCIATIONS' ROLE IN THE CODIFICATION OF THE HUNDI RULES*

In our country the hundi system belongs to that part of the law merchant whose rules and usages are still not codified. As Thomas Atkins Street explains in his famous work "The Foundations of Legal Liability", the most pressing need felt by merchants in the transactions of their business is for quick rather than unerring justice. Speedy administration of justice and in the special forums according to the custom of the merchants were the features which originally distinguished the administration of the law merchant which was conceived as a system of rules known especially among merchants and declared by them in the rule of their associations. The role the sharafi associations are playing with reference to the hundi system is analogous to the role the merchant bodies had played throughout the world in the development of the law merchant. It is the vitality derived from out of this sustaining organisational link that has helped the hundi system to survive the powerful onslaughts from western trade influences and to withstand so far the attempts made at different times for the abolition of the system.

2. Codification in the area of law merchant was attempted initially and successfully in the realm of negotiable instruments. This is a development common to the U.K., India, the U.S.A. and the Continental countries. But when codification was attempted in India, the attempt was not to codify the system that has indigenously developed already, but to transplant the rules and practices that prevailed in the U.K. For facilitating trade and commerce with western countries and for the development of commercial banking based on the traditions of the U.K., this transplantation has proved effective. But while this has naturally affected the growth of the indigenous system, this did not eliminate the utility of the indigenous system. The indigenous system has continued side by side though with varying vicissitudes in its growth and development.

3. The sharafi associations in the different parts of our country have been functioning as the preservers of the hundi system and since the courts of the land were not fully aware of the indigenous business practices, these associations have continued to play with reference to hundis their dispute resolving role and they have been helping in the settlement of innumerable cases of disputes arising between merchants, one or both of whom would be its member/s. While we do not have all the statistics necessary, the reports of different associations do indicate that small businessmen, retailers and traders who employ hundis derive real benefit from the sharafi associations in settling their disputes with reference to hundis. While the role played by sharafi associations in Bombay in this regard is fairly well-known, I may refer to an association in Calcutta which, during the year 1973 alone, seems to have received as many as 6,868 cases for settlement and that out of them, most of the cases seem to have been amicably settled through the intervention of the Hundi Sub-Committee of the Chamber. The custom of the land has sanctified this practice and the courts of the country have generally respected the decisions of these chambers.

*Article of Shri R. Krishnan, Secretary, Banking Laws Committee published in the Souvenir brought out on the occasion of the All India Shroffs Conference held in Bombay on the 10th September, 1976.

4. The link between the hundis and the sharafi associations functioning in an area is made more formal by the fact that many hundis contain a statement written on their face that the instruments are issued as per the rules of the specified sharafi association. These chambers generally were and are even now deciding whether a refusal to pay a hundi, a presentation of a hundi for noting or for payment, and such other matters connected with indigenous negotiable instruments and which usually form the major points of disputes were in accordance with established business practices applicable to the type of hundi under consideration.
5. While the western system has developed the bearer type of negotiable instruments, the indigenous system has developed the shahjogi type. Here, payment is effected to a person of known standing in the market and by doing so, the drawee is absolved. It is common knowledge that except with reference to negotiable instruments issued by highly reputed parties, the bearer type of negotiable instrument is rarely accepted by third parties for business payment. On the other hand the shahjogi instrument is widely accepted and circulates in the market.
6. While the indigenous system has its salient points, it does not mean that this system could be accepted without an examination of the prevailing rules and practices. Over the course of years, some divergencies have developed in the rules and practices applicable to hundis drawn in different areas in local languages with characteristics peculiar to themselves. Some types of hundis have been in circulation mainly in certain parts of the country. Some forms have been popular only at certain periods of time. Again persons familiar with the business practices relating to hundis in one area of the country have been by and large not so familiar with the various practices applicable to hundis circulating in other areas. But it may be mentioned that the basic characteristics and the essential features of the different types of hundis current in our country and the main business practices with reference to them have been by and large not diametrically varying and if they differ, the difference has not been of substance but only of degrees. If the divergencies are not to become very marked, if clarity is to be maintained with reference to the usages relating to hundis and if a greater understanding and awareness of the hundi business is to be developed in official quarters, then this can be done only by means of codification of the hundi customs and usages.
7. No wonder that under the circumstances, the Banking Commission recommended codification of the practices and usages relating to indigenous negotiable instruments (hundis) after an expert study of the role of the indigenous banking associations and the business practices with reference to hundis. Government's acceptance of this recommendation has resulted in the Banking Laws Committee being entrusted with this responsibility.
8. As earlier pointed out, the sharafi associations have an important role in the working of the hundi system. They provide the forum where small businessmen, retail traders and others who employ hundis for settling their claims can have commercially inexpensive and expeditious legal aid and advice. Sharafi associations, especially in Bombay, Calcutta and some other centres of this country have been providing this aid for the past several decades.
9. The recognition of the need for the codification of the practices and usages' it can very well be said, has not been late. Codification has been long overdue simply for this reason, namely, that even in centres where the sharafi associations have been in the past performing their role effectively, matters have become so complex and knowledgeable persons in the field have become only a few.
10. In considering codification of the rules and usages relating to hundis, naturally the question arises of the extent of application to hundis of the provisions of the Negotiable Instruments Act, 1881. The application of the provisions of the

Act may be considered to the extent such application would not be opposed to the specific rules or practices prevailing with reference to hundis. On the other hand the proposals for the codification of the hundi rules could be complete and self contained. The Negotiable Instruments Act, 1881, has dealt only with specified classes of negotiable instruments. While formulating proposals for legislation with reference to hundis we may have to consider not merely the rules and practices applicable to hundis but also if possible the method by which we could preserve the inexpensive and expeditious legal aid and advice which the sharafi associations are providing to small businessmen, retailers and others with reference to hundis employed by them.

11. As Sir Mckenzie Chalmers, the draftsman of the U.K. Bills of Exchange Act, has explained, "codification pure and simple is an impossibility. The draftsman comes across doubtful points of law which he must decide one way or other. Again...there are occasional gaps which a codifying Bill must bridge over if it aims at anything like completeness."

12. Hence, for the process of codification to be fruitful the involvement of the sharafi associations in this process is necessary. It also requires considerable resilience and adaptability on the part of the different sharafi associations. The convening of the All-India Sharafi Conference mainly to help in the process of the codification of the hundi rules clearly points to the recognition by the sharafi associations of the constructive role they may have to play in this process.

ANNEXURE 7

**"HUNDI CODE ACT, 1978" SPONSORED BY THE FEDERATION
OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY, AND
OTHER ASSOCIATIONS**

FEDERATION OF INDIAN CHAMBERS OF COMMERCE & INDUSTRY

PRESIDENT

FEDERATION HOUSE,
NEW DELHI-110 001
Bombay, September 22, 1978.

The Chairman,
Banking Laws Committee,
(Government of India),
91, Walkeshwar Road,
BOMBAY 400 006.

DEAR SIR,

SUB :—Codification of the rules, customs and usages relating to hundis.

The hundi is the oldest credit instrument in our country and the Federation and its affiliated bodies have been taking special efforts to collaborate with the Banking Laws Committee in evolving acceptable proposals for codification of the rules, customs and usages relating to hundis. The Banking Commission (1972) has recommended such codification and the Federation is happy that the intensive exercise and studies undertaken by the sharafi associations and merchant bodies with the assistance of the Banking Laws Committee for such codification have now become fruitful. Now we formally submit to the Banking Laws Committee the final proposals for such legislation in the form of a draft Hundi Act. These proposals are based on a broad consensus arrived at amongst the representative bodies in the different zones of our country concerned with hundi transactions.

2. Of the sharafi associations and merchant bodies in the western zone of our country who have undertaken this voluminous task, special mention should be made to the Joint Sharafi Conference, Bombay, comprising (1) the Bombay Shroffs Association, Bombay, (2) the Hindustan Chamber of Commerce, Bombay, (3) the Grain, Rice and Oilseeds Merchants' Association, Bombay, (4) the Bharat Merchants' Chamber, Bombay, (5) the Western India Chamber of Commerce Ltd., Bombay, and (6) the Ahmedabad Shroffs Association, Ahmedabad. The Merchants' Chamber of Commerce, Calcutta has taken the lead in the eastern zone of our country and has collaborated in this work with commendable zeal.

3. At the Fourth All-India Shroffs Conference (1976), in which the Chairman of the Banking Laws Committee was the main speaker, the basic features of the hundi system and the proposals put forward by the Joint Sharafi Conference, Bombay, under the aegis of the Bombay Shroffs Association, have received general support. Subsequent to the said conference, there have been further intensive discussions with the representative bodies of different zones of our country with the assistance of the Banking Laws Committee and many experts have voluntarily

spared a considerable amount of their time, labour and energy and have contributed to the success of this project for the codification of the features of the hundi system.

4. The Federation fully endorses the proposals contained in the draft Hundi Act for the codification of the hundi customs and usages and hopes that the Banking Laws Committee would recommend the making of expeditious legislation for codification. As you are aware, this work of codification is overdue for over a century and at this juncture it is vitally necessary for strengthening the indigenous business practices and banking system which enable small businessmen, retailers, traders, merchants and other members of the business community to have recourse to the inexpensive, expeditious and efficient system whereunder they could have their commercial and trade claims settled. For the economic development of the rural India, the codification of the essential features of the hundi system may serve as a landmark in that it will give added respectability and certainty and facilitate the village entrepreneurs and small businessmen to have recourse to the hundi system with ease and derive the benefits of the system. The Law Commission of India has also earlier emphasised the necessity for preserving our indigenous banking system and the features of hundis as they provide an efficient and economic means for transmission of funds and extension of credit including the means for financing the storage and movement of goods.

Yours faithfully,

(Sd.)

PRAVINCHANDRA V. GANDHI

“THE HUNDI CODE ACT, 1978”

DRAFT

Sponsored by

**FEDERATION OF INDIAN CHAMBERS OF
COMMERCE & INDUSTRY, NEW DELHI**

Assisted by

I. SHARAFI JOINT CONFERENCE

233-A, Shroff Bazar, BOMBAY 400 002.

Comprising :

- (a) The Bombay Shroffs Association,
233-A, Shroff Bazar, BOMBAY-400 002
- (b) Hindustan Chamber of Commerce
342, Kalbadevi Road, BOMBAY-400 002.
- (c) Bharat Merchants' Chamber,
399, Kalbadevi Road, BOMBAY-400 002.
- (d) The Grain, Rice & Oilseeds Merchants' Association,
72/80, Yusuf Meheralli Road, BOMBAY-400 003.
- (e) The Western India Chamber of Commerce Ltd.,
232, Kalbadevi Road, BOMBAY-400 002.
- (f) The Ahmedabad Shroffs Association,
Manek Chowk, AHMEDABAD.

&

II. MERCHANTS' CHAMBER OF COMMERCE

3/1/2, Armenian Street, CALCUTTA-700 001.

THE HUNDI CODE BILL, 1978

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THE HUNDI CODE BILLS, 1978

(BILL No. OF 1978)

An Act to regulate hundi transactions and codify customs and usages relating thereto.

Be it enacted by Parliament in the Twentyninth year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Hundi Code Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It extends to the whole of India except the State of Jammu & Kashmir, to which State it shall extend subject to modifications, if any, which the President may notify in consultation with the Government of that State.

2. Definitions.—In this Act, unless there is anything repugnant to the subject or context,—

(i) “acceptance” means the assent by the signature of the drawee or the jikriwala of a hundi for payment on the due date of its amount together with the date of such signature;

(ii) “association” means a body registered under section 25 of the Companies Act, 1956, or under the Societies Registration Act, 1869, or under the Indian Trade Unions Act, 1926, which on the date of commencement of this Act is assisting and regulating transactions in hundis or which after the commencement of this Act takes up this work;

(iii) “bye-laws of an association” means the rules framed by an association under section 78;

(iv) “date” mentioned in a hundi means the day according to the Gregorian calendar;

(v) “discharge” means the acknowledgement by the presenter on the hundi of its payment;

(vi) “drawee” means the person who is directed by the drawer to pay the amount mentioned in the hundi;

(vii) “drawer” means the person who has drawn the hundi;

(viii) “holder” of a hundi means a person in possession of a hundi which is either drawn in his favour or indorsed to him or to his order or to bearer or in blank, and includes the purchaser of the hundi; when the hundi is lost or destroyed, its holder is the person so entitled at the time of the loss or destruction;

(ix) “holder in due course” means any person who for consideration became the holder of a hundi before the amount mentioned in it has become overdue and without having sufficient cause to believe that any defect existed in the title of the person from whom he has derived his title;

(x) "holiday" means any day which is declared as a holiday under section 76;

(xi) "hundi" means an instrument, in writing, which has more than two parties and which contains a statement that it is drawn subject to the bye-laws of the association mentioned in the instrument and which contains an order, signed by the drawer, directing the drawee to pay at sight or after the period specified therein, a specified sum of money only to or to the order of a certain person or himself or to the bearer of the instrument;

Explanation.—where a hundi is drawn by a person at one place on himself at another place, the drawer and the drawee shall be considered as two parties for the purpose of this clause;

(xii) "to indorse a hundi" means the signing on a hundi by the holder thereof, for the purpose of negotiation;

(xiii) "indorsee of a hundi" means the person in whose favour the hundi is indorsed by name;

(xiv) "indorsement in blank" means the indorsement made by the indorser by signing his name only;

(xv) "indorsement in full" means the indorser signing the hundi and adding a direction to pay the amount mentioned in the hundi to or to the order of a specified person;

(xvi) "indorser" means the person who indorses the hundi;

(xvii) "jikriwala" means the person who is directed by the drawer, rakhya or any indorser to pay the amount mentioned in the hundi in case the drawee does not accept the hundi or the drawee refuses either to note or to pay the amount of the hundi, whether or not accepted by him;

(xviii) "khokha" means a discharged hundi;

(xix) "material alteration" with reference to a hundi means any alteration which changes the contract of any party thereto in any respect, including any such change in—

(a) an incomplete hundi, by completing it otherwise than as authorised;
or

(b) the writing as signed, by adding to it or by removing any party of it,
or

(c) the name of the association, the date or the miti, the sum payable the time of payment, or the place of payment; or

(d) the addition of a place of payment where the hundi has been accepted generally, without the acceptor's assent; or

(e) the addition of the name of a new drawer without the consent of the original drawer or drawers; or

(f) an alteration in the name of the rakhya of a hundi; or

(g) an unauthorised description in the rakhya's name; or

(h) the addition of the words requiring payment of interest at a specified rate, where originally no rate of interest was provided in the hundi;

(xx) "maturity" of a hundi is the date on which it falls due;

(xxi) "miti" mentioned in hundi means the day according to the Vikram Samvat;

(xxii) "nakrai shikarai" means the compensation payable under s 80 on the dishonour of a hundi;

(xxiii) "negotiation" of a hundi means its transfer to any person so constitute that person the holder thereof;

(xxiv) "noting" means the recording by the drawee under his sign and date or miti the fact of its presentment for payment; "noting" does not a to "acceptance";

(xxv) "payment in due course" means the payment of a hundi in accordance with the apparent tenor thereof in good faith and without negligence to person in possession thereof under circumstances which do not afford a reasonable ground for believing that such person is not entitled to receive payment the amount therein mentioned;

(xxvi) "penth" means the instrument given by the drawer of a hundi before payment is made of the hundi, setting out therein the material particulars of the hundi which has been lost, stolen, misplaced, torn, defaced or destroyed;

(xxvii) "per penth" means the instrument given by the drawer of a hundi before payment is made of the hundi or its penth, setting out therein the material particulars of the hundi and the penth which have been lost, stolen, misplaced, defaced or destroyed;

(xxviii) "praman patra" means the certificate issued by an association that the hundi has been dishonoured and it also includes a stamp of dishonour affixed on the hundi by the association;

(xxix) "rakhya" means the person to whom or to whose order the drawer has directed the payment of the hundi;

(xxx) "shah" means a responsible and respectable person of worth, standing and credit on whose responsibility the amount of the shahjog hundi is to be paid; and

(xxxi) "working day" for the purposes of accepting, noting or presenting for payment of a hundi means a day which is not a holiday.

3. *Hundis to be drawn only under this Act.*—Notwithstanding [any] other law in force at the time being in force, after the coming into force of this Act—

(i) no indigenous negotiable instrument shall be recognised as such or as a valid and enforceable unless such instrument comes within the scope of the definition of "hundi" given in this Act; and

(ii) no local usage relating to any negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881, which is inconsistent with the provisions of that Act shall be recognised.

CHAPTER II

CONTENTS OF A HUNDI

4. *Hundi to state date or miti.*—A hundi shall state the date or miti on which the hundi has been drawn.

5. *Fixing the days of the hundi.*—(1) If the miti falls on two days of the week and the earlier day is also stated in the hundi, then that miti shall be equivalent to two days.

(2) If the miti falls on two days of the week and neither of the said two days is stated in the hundi, then the miti shall be equivalent to one day.

6. *Hundi bearing both date and miti.*—(1) Where a hundi states both the date and the miti, the date alone shall prevail.

Hundi bearing no date and no miti.—(2) Unless a hundi bears a date or a miti it shall not be payable.

7. *Hundi to state the name of the drawer, drawee and rakhya.*—A hundi shall state the name and address of the drawer, the drawee and the jikriwala (if any) and also the name of the rakhya.

8. *Hundi to state amount.*—A hundi shall state the amount payable under it both in words and in figures. No liability to make any payment under a hundi shall arise if the amount payable under it cannot be clearly ascertained or there is a discrepancy between the amount as stated in words and that as stated in figures.

CHAPTER III

PENTH AND PER PENTH

9. *Penth*.—(1) When a hundi has been lost, stolen, misplaced, torn, defaced or destroyed, the person, who was entitled to it and from whose possession it was so lost, stolen, misplaced, torn, defaced or destroyed, shall be entitled by a communication in writing signed by him to demand from the person from whom he acquired the hundi to procure for him its penth, and the person on whom such demand is made shall in his turn be entitled by a communication in writing signed by him to make a similar demand on the person from whom he acquired it and so on and finally the rakhya shall in his turn be entitled to make a similar demand from the drawer of the hundi.

(2) The drawer shall thereupon inform the drawee, in writing, of the material particulars of the hundi and state that a demand has been made upon the drawer for the issue of its penth and that the drawee shall, therefore, inform the drawer whether the drawee has paid the amount of the hundi. If the drawee has already made payment of the hundi before receipt of such information, in writing, from the drawer, the drawee shall inform the drawer accordingly. If, however, the drawee has not already made payment of the hundi before receipt of such information in writing from the drawer, the drawee shall not, after receipt of such information in writing from the drawer, pay the amount of the hundi.

(3) When the drawee informs the drawer that the drawee has not paid the amount of the hundi, the drawer shall prepare its penth and send it to the rankhya the rakhya shall send it to the person to whom he transferred the hundi and so on, till the penth reaches the person from whose possession the hundi was so lost, stolen, misplaced, torn, defaced or destroyed.

(4) After the drawer issues the penth to the rakhya, the penth will replace the hundi and no payment shall be made on the original hundi.

(5) The penth shall be deemed to be the original hundi, with rights and obligations in respect thereof as existing at the date when it was lost, stolen, misplaced, torn, defaced or destroyed.

10. *Per penth*.—(1) When the penth has been lost, stolen, misplaced, torn, defaced or destroyed, the person who was entitled to the penth and from whose possession it was lost, stolen, misplaced, torn, defaced or destroyed shall be entitled, by a communication in writing signed by him to demand from the person from whom he acquired the penth to procure for him its per penth, and the person on whom such demand is made shall in his turn be entitled by a communication in writing signed by him to make a similar demand on the person from whom he acquired it and so on and finally the rakhya shall in his turn be entitled to make a similar demand from its drawer.

(2) The drawer shall thereupon inform the drawee of the material particulars of the penth and state that a demand has been made upon the drawer for the issue of its per penth and that the drawee should, therefore, inform the drawer whether the drawee has paid the amount of the penth. If the drawee has already made payment of the penth before receipt of such information from the drawer, the drawee shall inform the drawer accordingly. If, however, the drawee has not already made payment of the penth before receipt of such information from the drawer, the drawee shall not after receipt of such information from the drawer pay the amount of the penth.

(3) When the drawee informs the drawer that the drawee has not paid the amount of the penth, the drawer shall prepare its per penth and send it to the rakhya, the rakhya shall send it to the person to whom he transferred the penth and so on till the per penth reaches the person from whose possession the penth was so lost, stolen, misplaced, torn, defaced or destroyed.]

(4) When the drawer issues the per penth to the rakhya, the per penth will replace the penth and no payment shall be made on the penth.

(5) The per penth shall be deemed to be the penth, with rights and obligations in respect thereof as existing at the date when it was lost, stolen, misplaced, torn, defaced or destroyed.

CHAPTER IV PARTIES TO HUNDIS

11. *Capacity to draw hundi.*—(1) Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by drawing, acceptance, indorsement, delivery and negotiation of a hundi.

(2) A minor may draw accept, indorse, deliver and negotiate a hundi so as to bind all parties except himself.

(3) Nothing herein contained shall be deemed to empower a corporation to draw, indorse or accept a hundi except in cases in which, under the law for the time being in force, it is so empowered.

12. *Agency.*—Every person capable of binding himself or of being bound, as mentioned in section 11 above, may so bind himself or be bound by a duly authorised agent acting in his name. A general authority to transact business does not confer upon an agent the power of noting, accepting or indorsing hundis so as to bind his principal. An authority to draw hundis does not of itself import an authority to indorse.

13. *Liability of agent signing.*—An agent who signs his name to a hundi without indicating thereon that he signs as agent or that he does not indent there by to incur personal responsibility is liable personally on the hundi, except to those who induced him to sign upon the belief that the principal only would be held liable.

14. *Liability of legal representative signing.*—A legal representative of a deceased person who signs his name to a hundi is liable personally thereupon unless he expressly limits his liability to the extent of the assets received by him as such.

15. *Liability of drawer.*—The drawer of a hundi is bound, in case of dishonour by the drawee or acceptor or jikriwala thereof, to pay the holder of the hundi the entire amount of the hundi with nakrai shikarai and interest with such other sum, if any as may be prescribed by the bye-laws of the association, provided a praman patra has been obtained and notice thereof has been given to, or received by, the drawer.

16. *Liability of acceptor.*—(1) The acceptor of a hundi is bound to pay the amount thereof at maturity to the holder of the hundi on presentment thereof as per the bye-laws of the association.

(2) In default of such payment as aforesaid, the acceptor is bound to pay the entire amount of the hundi with nakrai shikarai and interest with such other sum, if any, as may be prescribed by the bye-laws of the association.

17. *Only drawee or jikriwala can be acceptor.*—The drawee of a hundi, or the jikriwala if the drawee refused to accept the hundi, or when there are more jikriwalas than one each of them after the previous jikriwala refuses to accept the hundi, can be the acceptor of the hundi.

18. *Liability of indorser.*—Whoever indorses and delivers a hundi before maturity is bound thereby to every subsequent holder in case of dishonour of the said hundi by the drawee, acceptor or jikriwala to pay such holder of the hundi the entire amount of the hundi with nakrai shikarai and interest with such other sum, if any, as may be prescribed by the bye-laws of the association, provided a praman patra has been obtained and notice thereof has been given to, or received by, such indorser.

19. *Liability of prior parties to holder in due course.*—Every prior party to a hundi is liable thereon to a holder in due course until the hundi is duly satisfied.

20. *Drawer and acceptor are principal debtors.*—The drawer of a hundi until acceptance, and the acceptor are, in the absence of a contract to the contrary, liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the drawer or the acceptor, as the case may be.

21. *Prior party a principal debtor in respect of each subsequent party.*—As between, the parties so liable as sureties each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

22. *Suretyship.*—When the holder of a hundi enters into any contract with the acceptor which, under section 134 or section 135 of the Indian Contract Act, 1872 would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

23. *Discharge of indorser's liability.*—Where the holder of a hundi, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party the indorser is discharged from liability to the holder to the same extent as if the hundi has been paid at maturity.

24. *Acceptor bound although indorsement forged.*—An acceptor of a hundi already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the hundi.

25. *Acceptance of hundi the name of the drawer whereof is fictitious.*—An acceptor of a hundi payable to the drawer's order is not, by reason that the drawer's name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

26. *Hundi drawn, accepted, indorsed or transferred without consideration.*—A hundi, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation. But if any such party has transferred, the hundi with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such hundi from the transferor for consideration or any prior party thereto.

Exception : No party to the hundi who has induced any other party to draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon any amount exceeding the value of the consideration, if any, which he actually paid or performed.

27. *Partial absence or failure of money consideration.*—When the consideration for which a person has drawn or indorsed a hundi consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such drawer or indorser entitled to receive from him is proportionately reduced.

Explanation : The drawer of such a hundi stands in immediate relation with the acceptor as also with the rakhya and the indorser with his indorsees. Other indorsers may by agreement stand in immediate relation with a holder.

28. *Partial failure of consideration not consisting of money.*—Where a part of the consideration for which a person has drawn or indorsed a hundi, though not consisting of money, is ascertainable in money without collateral enquiry, and there is a failure of that part, the sum which a holder standing in immediate relation with such drawer or indorser is entitled to receive from him is proportionately reduced.

CHAPTER V

NEGOTIATION

29. *Delivery.*—(1) The drawing, acceptance or indorsement of a hundi is completed by delivery, actual or constructive.

(2) As between parties standing in immediate relation, delivery to be effectual must be made by the party drawing, accepting or indorsing the hundi or by a person authorised by him in that behalf.

(3) As between such parties and any holder of the hundi other than a holder in due course, it may be shown that the hundi was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

30. *Negotiation by delivery.*—Subject to the provisions of section 37, a hundi payable to bearer is negotiable by delivery thereof.

Exception : A hundi delivered on condition that it is not to take effect except a certain event is not negotiable except in the hands of a holder in due course without notice of the condition, unless such event happens.

31. *Negotiation by indorsement and delivery.*—Subject to the provisions of section 37, a hundi payable to order is negotiable by the holder by indorsements and delivery thereof.

32. *Effect of indorsement.*—The indorsement on a hundi followed by delivery transfers to the indorsee the property therein with the right of further negotiation but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the hundi, or to receive its content for the indorser, or for some other specified person.

33. *Who may negotiate.*—Every holder of a hundi may, if the negotiability of such hundi has not been restricted or excluded as mentioned in section 32, indorse and negotiate the same.

34. *Holder deriving title from holder in due course.*—A holder of a hundi who derives title from a holder in due course has the rights thereon of that holder in due course.

35. *Hundi indorsed in blank.*—A hundi indorsed in blank is payable to the bearer thereof even though originally payable to order.

36. *Indorsement for part of sum due.*—No writing on a hundi is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the hundi.

37. *Lost hundi or hundi obtained by unlawful means or for unlawful consideration.*—When a hundi has been lost or has been obtained from any drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the hundi is entitled to receive the amount due thereon from such drawer, acceptor or holder.

or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder in due course.

38. *Hundi acquired after dishonour or when overdue.*—The holder of a hundi who has acquired it after dishonour, whether by non-acceptance, non-noting or non-payment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Provided that any person who, in good faith and for consideration, becomes such holder of a hundi drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the hundi from any prior party.

39. *Hundi negotiable till payment or satisfaction.*—A hundi may be negotiated until it is discharged by payment or satisfaction.

CHAPTER VI
PRESENTMENT

40. *Maturity of hundi.*—(1) A hundi payable at sight shall become due for payment on the working day succeeding immediately after the date or miti of the hundi.

(2) A hundi payable after the period specified therein shall become due for payment on the working day succeeding immediately the last day of the period specified in the hundi

Explanation : In calculating the number of days, the date or miti on which the hundi is drawn shall be excluded.

41. *Presentment for acceptance and/or payment.*—(1) A hundi payable after the period specified therein must be presented to the drawee thereof for his acceptance within a reasonable time after it is received by the holder.

(2) If the drawee accepts the hundi, he shall indicate the same by giving his assent by his signature on the hundi with the date or miti of such acceptance.

(3) An accepted hundi payable after a specified period mentioned therein shall be presented for payment to the drawee thereof at maturity.

(4) A hundi payable at sight must be presented for noting and payment within a reasonable time after it is received by the holder.

42. *Presentment for acceptance and/or payment.*—(1) Presentment of a hundi for acceptance and/or payment in accordance with section 41 shall be made on any working day during business hours and in other respects shall be in accordance with the bye-laws of the association.

Explanation 1 : If any question arises whether the hundi has been presented for payment within a reasonable time or not, the same shall be determined by the association, subject to whose bye-laws the hundi has been drawn; but, the reasonable time shall in no case exceed six months from the date of the maturity of the hundi.

Explanation 2 : Delay in presentment of the hundi for noting and payment would be excluded in computing the reasonable time if such delay is due to circumstances beyond the control of the holder.

(2) *Revalidation of a hundi.*—If for no fault of the holder, any holder in possession of a hundi after six months from the date of its maturity shall be entitled to obtain from the drawer a revalidation of the hundi and on the drawer writing on the face of the hundi the expression "revalidated" or any other expression conveying the same meaning, under his signature giving the date or the miti, the holder shall be entitled to present the same for payment within a reasonable time thereafter.

(3) On such presentment, the drawee, or the acceptor, as the case may be, shall make payment of the hundi as per the bye-laws of the association subject to which the hundi has been drawn.

43. *Presentment to agent, legal representative or assignee.*—Presentment for acceptance or noting and payment may be made to the duly authorised agent of the drawee, or the acceptor, as the case may be, or where the drawee or the acceptor has

died, to his legal representative, or, where he has been adjudged an insolvent, to his assignee.

44. *Keeping a hundi khadi.*—(1) When any drawee or jikriwala, as the case may be, of a hundi which is drawn as payable at sight, does not note or pay the hundi when it is duly presented for payment, and at the same time he does not forthwith indicate his refusal to pay, the hundi is regarded as kept khadi. During the period any hundi is so regarded as khadi, it shall not be regarded as dishonoured for the period it is so kept. The period during which the hundi may be kept khadi shall not exceed three working days from the date or miti of its presentment. After the period during which the hundi may be kept khadi, unless the drawee or jikriwala, as the case may be, honours the hundi within the time allowed and in the manner prescribed by the bye-laws of the association, subject to which the hundi has been drawn, prior to the issuing of praman patra, he shall be regarded as having dishonoured the hundi.

(2) For the period the hundi is regarded as khadi under sub-section (1), if the drawee or jikriwala, as the case may be, honours the same, he is liable to pay, in addition to the amount of the hundi, interest for the khadi period at the rate prescribed by the association subject to which the hundi is drawn.

CHAPTER VII

PAYMENT AND DISCHARGE FROM LIABILITY

45. *To whom payment should be made.*—Payment of the amount of a hundi must be made to the holder presenting it in order to discharge the drawee or acceptor or jikriwala.

46. *Mode of payment.*—(1) The amount of a hundi shall be paid in cash or currency within the time prescribed by the bye-laws of the association subject to which the hundi has been drawn, unless the hundi specifies that the payment of the amount of the hundi shall be by cheque.

(2) If the amount of a hundi is paid by a cheque, the cheque shall be drawn on a bank in the place where the hundi is payable and issued within the time prescribed by the bye-laws of the association subject to which the hundi has been drawn. When the payment of a hundi is made by a cheque, the hundi shall only be deemed to have been duly discharged for all purposes when the cheque is honoured by the bank and the amount is credited to the account of the recipient. In the event of the cheque being dishonoured, the hundi shall be deemed to be unpaid.

47. *Discharge of hundi by payment.*—On receiving payment of the amount of the hundi, the person receiving the payment shall discharge it by acknowledging payment on the back of the hundi from the drawee, the acceptor or the jikriwala from whom the payment has been received, put the date or *miti* or such receipt and sign it and deliver the *khokha* to the person who makes the payment. Where the amount of the hundi is paid by a cheque, the drawee, acceptor or jikriwala may obtain from the holder presenting the hundi a receipt, if the bye-laws of the association subject to which the hundi has been drawn so permits, stating that the hundi is paid by the cheque, giving full particulars thereof and also stating that the hundi will become a *khokha* on the realisation of the cheque.

48. *Discharge from liability.*—The acceptor or indorser respectively of a hundi is discharged from liability thereon—

(a) to holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges such acceptor or indorser and to all parties deriving title under such holder after notice of such discharge.

49. *Discharge by allowing drawee more time.*—(i) When the holder of a hundi payable at sight waits for more than a reasonable time after the expiry of its *khadi* period; or

(ii) When the holder of a hundi payable after a specified period mentioned therein, does not, within a reasonable time after it is received by the holder, present it to the drawee thereof for his accepting it for payment, or does not on its due date present it to the acceptor for payment in cases where such presentment for payment is necessary under the provisions of this Act,

all previous parties not consenting to any of the defaults mentioned above are thereby discharged from liability to such holder.

50. *Effect of material alteration.*—Any material alteration of a hundi renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto unless it was made in order to carry out the

common intention of the original parties and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

51. *Parties not consenting discharged by qualified or limited acceptance.*—If the holder of a hundi acquiesces in a qualified acceptance or which is not signed by the drawee or jikriwala, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation : An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependant on the happening of an event (therein stated);

(b) where it undertakes [the payment of part only of the sum ordered to be paid; or

(c) where it undertakes the payment at a time] or place other than that at which the hundi would be otherwise legally due for payment.]

52. *Acceptor or indorser bound notwithstanding previous alteration of the hundi.*—An acceptor or indorser of a hundi is bound by his acceptance or indorsement notwithstanding any previous alteration of the hundi.

53. *Payment as per apparent tenor.*—Where a hundi has been materially altered but does not appear to have been so altered, payment thereof by a person liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course shall discharge such person from all liability thereto, and such payment shall not be questioned by reason of the hundi having been altered.

54. *Other parties' liability on alteration.*—Every indorser of a hundi is liable to his indorsee who is a holder in due course, as per the apparent tenor thereof at the time of such indorsement. Parties to a hundi who have taken the hundi before any material alteration therein are bound according to the terms of the original tenor of the hundi.

55. *Extinguishment of rights on hundi in acceptor's hands.*—If a hundi which is not payable at sight and which has been negotiated is at or after maturity held by the acceptor in his own right, all rights thereon are extinguished.

CHAPTER VIII

DISHONOUR OF HUNDIS

56. *When hundi deemed to be dishonoured.*—No presentment for acceptance or payment of a hundi is necessary and it shall be deemed to have been dishonoured if—

- (i) the drawee, acceptor or jikriwala, as the case may be, prevents presentment of the hundi, or
- (ii) the drawee, acceptor or jikriwala, as the case may be, cannot be found, or
- (iii) the drawee, acceptor or jikriwala, as the case may be, is not available at the address mentioned in the hundi during business hours on working day, or
- (iv) the drawee or jikriwala refuses to accept it for payment or refuses to note the presentment of the hundi for payment.

57. *Dishonour by non-acceptance.*—(1) A hundi is said to be dishonoured by non-acceptance when the drawee, or one of several jikriwalas, makes default in accepting it when required to do so, or where presentment is excused and the hundi is not accepted.

(2) Where the acceptance is qualified, the hundi may be treated as dishonoured.

58. *Dishonour by non-payment.*—A hundi is said to be dishonoured by non-payment when the drawee of the hundi makes a default in noting and the acceptor of the hundi defaults in making payment.

59. *Notice of dishonour in writing.*—(1) When a hundi is dishonoured by non-acceptance, non-noting or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice, in writing, to be delivered either by hand or by a registered post, that the hundi has been so dishonoured to all other parties whom he seeks to make severally liable thereon, and to someone of several parties whom he seeks to make jointly liable thereon and the notice may be in any form, but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the hundi has been dishonoured and in what way, and that such party will be held liable thereon; it must be given within a reasonable time after dishonour at the place of business or, in case such party has no place of business, at the residence of the party for whom it is intended.

(2) If the notice is sent by registered post and miscarried, such miscarriage does not render the notice invalid.

(3) Nothing in this section renders it necessary to give notice to the drawee or the acceptor of the dishonoured hundi.

60. *Notice may be given to agent.*—Notice of dishonour may be given in writing to be delivered either by hand or by a registered post, when necessary, to a duly authorised agent of the person to whom it is required to be given, or, when he has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

61. *Notice of dishonour to prior parties.*—Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives notice.

62. *Notice to agent for presentment.*—When the hundi is deposited with an agent for presentment, the agent is entitled at the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

63. *When party to whom notice is given is dead.*—When a party to whom notice of dishonour is despatched is dead, but the party despatching notice is ignorant of his death, the notice is sufficient.

64. *When notice of dishonour is unnecessary.*—No notice of dishonour is necessary:

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a namjog hundi;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the hundi.

65. *Report of dishonour and praman patra* —(1) When a hundi has been dishonoured by non-acceptance, non-noting or non-payment, the holder may, as expeditiously thereafter as possible, report the matter to the association subject to whose bye-laws the hundi has been drawn, in the form prescribed by the bye-laws of that association.

(2) On receipt of such report and payment of such fee to the association as may be prescribed for the purpose, the association shall, with all expedition as is reasonably possible, enquire of the drawer, acceptor and/or jikriwala, as the case may be, his reason for the dishonour and note the reasons, if any, and issue a praman patra to the holder presenting the hundi as per its bye-laws.

CHAPTER IX

SPECIAL RULES OF GUIDANCE

66. *Presumptions.*—Until the contrary is proved, the following presumptions shall be made :—

- (a) that every hundi was drawn for consideration, and that every such hundi when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) that every hundi bearing a date or miti was drawn on such date or miti
- (c) that every accepted hundi was accepted within a reasonable time after its date or miti and before its maturity;
- (d) that the indorsements appearing upon a hundi were made in the order in which they appear thereon;
- (e) if no date or miti of acceptance is to be found in the hundi, such date or miti would be presumed to be the date or miti of the hundi;
- (f) unless proved to the contrary, the signatures on the hundi would be deemed to be by the persons entitled to make such signatures.

67. *Presumption as to dishonour of hundi.*—In any proceeding upon a hundi, the factum of the same having been dishonoured shall be presumed on proof thereof by the praman patra issued by the association subject to whose bye-laws the hundi has been drawn.

68. *Estoppel against denying original validity of hundi.*—No drawer of a hundi shall in any proceeding thereon by a holder in due course be permitted to deny the validity of the hundi as originally drawn.

69. *Estoppel against acceptor or drawee noting.*—No acceptor or drawee who has noted on a hundi payable to order shall, in any proceeding thereon by a holder in due course, be permitted to deny the rakhya's capacity, at the date of the hundi, to indorse the same.

70. *Estoppel against denying signature or capacity of prior party.*—No indorser of a hundi shall, in any proceeding thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the hundi.

CHAPTER X

HUNDIS WITH SPECIAL FEATURES

71. *Bilti hundis*.—(1) When the drawer of a hundi intends that the hundi is to be accompanied by a document or documents of title to goods and that the amount of the hundi should be paid only against delivery of such document or documents, a statement to that effect shall be made on the hundi itself. Such a hundi shall be called a "bilti hundi".

(2) In the case of such a hundi, the acceptance or noting of the hundi for payment shall be conditional on the hundi being presented for payment along with the documents mentioned in the hundi.

(3) Payment of the amount of the hundi shall be made only if the person demanding such payment hands over such document or documents duly indorsed in favour of the drawee or the jikriwala who makes such payment.

72. *Nishaniwali hundi*.—(1) "Nishaniwali hundi" is a hundi which either states the name of a person who may be a buyer of the goods on whose account the drawer wants the drawee to honour the hundi, or states the account which the drawee is to debit for honouring the hundi. Such specified person or the holder of such account shall be regarded as the "nishaniwala".

(2) The nishaniwala shall be entitled at any time before the drawee pays the amount of the hundi to direct the drawee not to pay the amount of the hundi or to pay only a specified amount which may be smaller than the amount of the hundi. The nishaniwala shall normally give such direction in writing signed by him. In cases of urgency, the nishaniwala may give such direction to the drawee orally or by a telegram and on receipt of such oral or telegraphic direction, the drawee shall withhold payment of the amount of the hundi. The nishaniwala must subsequently confirm his oral directions, in writing, signed by him. The drawee shall act in accordance with the directions given by the nishaniwala, in writing, signed by him.

(3) When no amount or only an amount smaller than the amount of the hundi has been so paid, the rights and liabilities, if any, which may thereby arise shall be only as between the drawer of the nishaniwali hundi and the nishaniwala.

73. *Namjog hundi*.—(1) A "namjog hundi" is a hundi drawn as payable only to the person named therein.

(2) A namjog hundi cannot be negotiated by indorsement, provided however that it may be indorsed only for the purpose of realisation or for collection.

(3) The drawee shall pay the amount of a namjog hundi to the person named therein and to nobody else.

(4) The drawee of a namjog hundi shall be responsible only for payment made on a namjog hundi to any person other than the person named in the hundi or to such person's indorsee for realisation or for collection.

74. *Shahjog hundi*.—(1) A shahjog hundi is a hundi which at the time of its drawal contains a statement that it is a shahjog hundi and bears across its face two parallel transverse lines authenticated by the drawer under his signature and date or miti.

(2) The drawee, acceptor or jikriwala, as the case may be, of shahjog hundi shall in making payment thereof, ensure the identity of the holder presenting the hundi and receiving payment of the hundi.

(3) A shahjog hundi shall be paid only to a shah.

(4) The person receiving payment under a shahjog hundi shall be liable to refund to the drawee the amount paid on the hundi, together with interest thereon at the rate prescribed by the bye-laws of the association subject to which the hundi is drawn if the hundi turns out to be a false, fraudulent, stolen or forged hundi :

Provided that the person receiving payment on such a hundi shall not be so liable if the drawee fails to give him notice within a reasonably expeditious time of the discovery of such falsehood, fraud, theft or forgery and of his intention to claim a refund of such amount.

CHAPTER XI

ISSUE OF MAJARENAMA

75. (1) Any dispute relating to hundis and/or arising therefrom and/or in any way concerning thereto shall be decided by the association subject to whose by-laws the hundis is drawn. The decision of the association concerning any such dispute shall be known as "majarenama". The association may call upon the parties to any such dispute to pay the association such fees as it may prescribe by its by-laws for determining any such dispute and issuing a majarenama.

(2) The association shall have the powers to summon parties, ask for the production of documents and be competent to exercise all such powers as are conferred on an arbitrator duly appointed under the Arbitration Act, 1940. However, it shall not be necessary for the association to adhere strictly to the procedures prescribed under the Arbitration Act, 1940, in dealing with any such disputes.

(3) The majarenama of the association concerning any such dispute shall be final and binding on the parties.

(4) The majarenama of the association shall have the force of an award under the Arbitration Act, 1940, and shall be capable of being executed in the manner provided under that Act.

(5) The association may, for the purpose of enquiring into such disputes, appoint arbitrators out of a panel of arbitrators maintained for the purpose by the association.

(6) The majarenama shall not attract any stamp duty but in other respects it shall be drawn up in the form in which an award is required to be drawn up under the Arbitration Act, 1940.

CAPTER XII

MISCELLANEOUS

76. *Holiday*.—The association shall declare ordinarily before the commencement of every calendar year the days which are to be treated as holidays with reference to hundis drawn subject to its bye-laws, for the purpose of their presentment for acceptance and/or noting and payment. In special circumstances, besides the holidays so declared, the association may also declare such other days which shall be regarded as holidays for this purpose. Days declared as holidays under section 25 of the Negotiable Instruments Act, 1881, shall be deemed to be holidays declared by the association.

77. *Business hours*.—The association shall declare from time to time the business hours during which presentment of hundis for the purpose of acceptance and/or noting and payment shall be made with reference to hundis drawn subject to its bye-laws on any working day.

78. *Bye-laws of the association*.—The association shall make bye-laws which are not in any way inconsistent with the provisions of this Act and which may provide for—

(i) the manner in which a hundi drawn subject to its bye-laws may be presented for acceptance and/or noting and payment,

(ii) the procedure to be followed for accepting, noting or making payment with reference to hundis,

(iii) to prescribe the time within which the payment of a hundi shall be made in cash or currency or by cheque,

(iv) the procedure to be followed for issuing praman patra and the fees to be paid therefor,

(v) the detailed procedure for giving majarenama, including the fees to be paid for starting any proceeding for the issue of a majarenama, in accordance with the provisions of this Act, and

(vi) the matters which are incidental or consequential to the provisions of this Act concerning hundis which are drawn subject to the bye-laws of the association.

79. *Rates of interest*.—The association shall declare from time to time the rate at which interest shall be payable on hundis—

(i) during the khadi period,

(ii) in case of dishonour of hundis, and

(iii) when the payment received on a shahjog hundi has to be refunded to the drawee in accordance with section 74.

80. *Nakrai shikarai*.—The compensation payable as nakrai shikarai under this Act with reference to any hundi shall be determined at three-fourth of a per cent of the amount of the hundi, along with interest as per the bye-laws of the association subject to which the hundi has been drawn, from the date of the drawal of the hundi.

81. *Stamp duty*.—Notwithstanding any law for the time being in force, a hundi shall not be liable to any stamp duty.

ANNEXURE 8

SUGGESTIONS FROM THE GUJARAT FEDERATION OF SHROFFS AND ALLIED BODIES re : ADDITIONS/AMPLIFICATIONS TO THE PROPOSED HUNDI CODE BILL, 1978

THE GUJARAT FEDERATION OF SHROFFS

22nd September, 1978

The Chairman,
Banking Laws Committee,
(Government of India),
91, Wolkeshwar Road,
BOMBAY 400 006
DEAR SIR,

We are writing this on behalf of ourselves and our constituent sharafi associations including the Ahmedabad Shroffs Association and ten other district sharafi associations of Gujarat. The Ahmedabad Shroffs Association and other sharafi associations including the Gujarat Federation of Shroffs support the proposals for the "Hundi Code Act, 1978", which the President of the Federation of Indian Chambers of Commerce and Industry has submitted to the Banking Laws Committee today. While expressing our general support for the proposals as embodied in the "Hundi Code Act, 1978", it has been agreed between us and the other members of the Joint Sharafi Conference, Bombay, that we may bring the following *additional points* with our request to the Committee to incorporate them in the proposed legislation.

2. The additional points which require inclusion in the "Hundi Code Act, 1978" relate to the recognition of "*shroff*" and the necessity for appropriate statutory provisions regarding the shroffs' dealings in hundis. 80 to 90 per cent of the volume of hundi transactions in our country relate to hundis issued and/or paid by "Shroffs". Hence, the position of "shroffs" with reference to hundis is identical with that of commercial banks' dealings in cheques. The Negotiable Instruments Act gives a statutory recognition to the "banker". On the same logic the indigenous banker, *viz.*, the "shroff" merits recognition in the "Hundi Code Act, 1978". On like reasoning with reference to the payment and collection of hundis by shroffs, there have to be provisions analogous to those now found applicable to the handling of cheques and drafts by commercial banks (*vid.* sections 85, 85A, 131 and 131A of the NIA).

3. In view of the above, we are suggesting certain additions/amplifications to the proposals submitted today on behalf of all associations. We presume that the Federation of Indian Chambers of Commerce and Industry is neutral and that the representative associations in the eastern zone have no point of disagreement with reference to these. In the Gujarat State, there is a well recognised network of sharafi associations and we are representing the points of shroffs with reference to the codification of the hundi practices. Since such well-knit sharafi associations are yet to take shape in other States (steps are being taken for forming such associations in other States), it is understandable that as regards these proposals no such emphasis has been made by other associations on these points. But the merits of the points which we have urged have an all-India application. Hence, we request the

Committee to consider these points (*vide* enclosure) and include the same in its final proposals for the "Hundi Code Act, 1978" for the expeditious enactment of the provisions thereof by a Central legislation.

Thanking you in anticipation,

Yours faithfully,

Sd/-
(J. P. THAKKAR)
Vice-President

(1) The Gujarat Federation of Shroffs

(2) For the Ahmedabad Shroffs Association
Sd/-

(S. T. THAKKAR)

(3) For the Vadodara Jilla Shroffs Association
Sd/-

(KAMLESH RASIKLAL SHAH)

Sd/-
(KIRTIKUMAR P. SHAH)

Authorised Representative

(4) For The Kheda Jilla Shroffs Association

Sd/-
(MANIBHAI MOTIBHAI GANDHI)

Secretary

(5) For The Mehsana Jilla Shroffs Association

Sd/-
(PRAHLADBHAI PATEL)
Authorised Representative

(6) For The Nadiad Shroff Association

Sd/-
(RASIKLAL R. SHAH)

Secretary

(7) For The Anand Shroffs Association

Sd/-
(NAVINCHANDRA CHAMPAKLAL SHAH)

President

(8) For The Petlad Shroffs Association

Sd/-
(ARVINDBHAI AMIN)

President

(9) For The Cambay Shroffs Association

Sd/-
(MAYANKBHAI P. PARIKH)

President

(10) For The Borsad Shroffs Association

Sd/-
(KANTILAL MAGANLAL THAKKAR)

President

THE GUJARAT FEDERATION OF SHROFFS

Enclosure to our letter dated 22nd September, 1978

Amendment to be carried out to the proposals for the "Hundi Code Act, 1978" submitted along with FICCI President, Shri Pravinbhai V. Gandhi's letter dated 22nd September, 1978.

(1) Please add the following definition of 'Shroff' :

Shroff :

"Shroff means a person whose principal business is to accept deposits and to advance loans and who, in the course of such business, draws, accepts and/or honours hundis;"

(2) Please add a separate provision on the following lines :

"Any Hundi, bearing the expression 'Payable through Shroff' shall be paid onl
•through a Shroff"

(3) Please add the following Chapter :

**PAYMENT AND COLLECTION OF
HUNDIS BY SHROFFS**

(i) Hundi payable to order.—Where a hundi is drawn payable to or to the order of the rakhya and purports to be indorsed by or on behalf of the rakhya or any subsequent holder thereof, the shroff is discharged when he makes payment thereof in due course.

(ii) Shroff receiving payment on a hundi—A shroff who has in good faith and without negligence received payment of a hundi for his customer shall not, in case the title to the hundi proves defective incur any liability to the true owner of the hundi by reason only of having received, such payment.

Explanation : A shroff receives payment of a hundi for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the hundi before receiving payment thereof.

22nd September, 1978

The Chairman,
Banking Laws Committee,
(Government of India),
91, Walkeshwar Road,
BOMBAY 400 006.

DEAR SIR,

SUB : Proposals for Hundi Codification—Proposed "Hundi Code" Act, 1978"

We, the leading members of the Bombay Shroffs Association of whom No. 1, 2 and 4 are the members of the Managing Committee of the Association fully endorse and strongly support the suggestions for certain additions/amplifications in the proposed "Hundi Code Act, 1978" made by the Gujarat Federation of Shroffs, the Ahmedabad Shroffs Association and eight other Shroffs Associations of Gujarat State by their letter dated 22nd September, 1978.

Thanking you,

Yours faithfully,
CHHOTALAL PRABHUDAS SHROFF

Sd/-

(Bombay) Partner

For Chandrakant Amratlal Parikh, H.U.F.

Sd/-

Karta/Attorney

For HIRALAL JATHALAL PARIKH

Sd/-

Partner

For HIRALAL HARILAL THAKKA

Sd/-

Partner

ANNEXURE 9
SHRI R. KRISHNAN
SECRETARY
BANKING LAWS COMMITTEE
(Government of India)

Other Officials of the Special Cell assisting the Banking Laws Committee

Shri	L. H. Kulkarni	.	.	.	.	.	Banking Officer
"	S.B. Fos	.	.	.	.	.	Banking Officer
"	N. K. Puri*	.	.	.	.	.	Legal Officer
"	S.C. Gupta	.	.	.	.	.	Legal Officer
"	Ch. L. Mohana Rao	.	.	.	.	.	Sub-Accounts Officer
"	O. S. Khanna	.	.	.	.	.	Staff Officer
"	A. F. Pereira*	.	.	.	.	.	Staff Officer
"	A. R. Dalvi	.	.	.	.	.	Staff Officer
"	V. Vembu	Personal Assistant

***Earlier associated with the work of the Committee.**

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