

# **RESIGNED BANK EMPLOYEES' FORUM**

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([E-mail:rbef2010@gmail.com](mailto:rbef2010@gmail.com))

Date: 28.02.2012

**By Registered AD**

To,

A) The Secretary,  
Government of India,  
Banking Division, Ministry of Finance  
Jeevandeep Building, 3<sup>rd</sup> Floor,  
Sansad Marg, New Delhi-110001

B) The Hon Minister of Finance,  
Government of India,  
Ministry of Finance,  
New Delhi 110001

C) The Hon Prime Minister of India  
Prime Minister's Office  
South Block,  
New Delhi - 110101

**Re: Permission for prosecution of Mr. M. V. Nair, Chairman and Managing Director of Union Bank of India and Mr. M. D. Mallya, Chairman and Managing Director of Bank of Baroda, under Section 197 of Code of Criminal Procedure, 1973**

**Respected Sir,**

The applicant is a registered Society of resigned bank employees, registered under Andhra Pradesh Societies Registration Act, 2001. The applicant hereby respectfully submits and earnestly requests as under:

- 1) Shri. M. V. Nair is a public servant and presently holding the official position as Chairman & Managing Director of Union Bank of India, a bank formed under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and situated at Union Bank Bhavan, Nariman Point, Mumbai 400021. Shri. M. D. Mallya is a public servant and presently holding the official position as Chairman & Managing Director of Bank of Baroda, also a bank formed under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and situated at Baroda House, Bandra-Kurla Complex, Bandra East, Mumbai 400051. Both, Shri. M. V. Nair and Shri. M. D. Mallya, were holding the position of Chairman and Deputy Chairman, respectively, of the IBA before, on and after 27.04.2010. As on date, Shri. M. D. Mallya is a Chairman and Shri. M. V. Nair is an Executive Committee Member of the IBA. The IBA is a body constituted by and under the supervision, direction and control of Government of India. The two banks named herein are statutory bodies formed under the central law referred herein and are public authorities under Article 12 of the Constitution of India.

2) The applicant is contemplating initiation of appropriate criminal proceedings against the above named two persons besides other persons, whose names, official positions and designations are given here below, for the reasons mentioned in the enclosed statement of case, purpose and objet, for committing offenses of crime as specifically committed by them against the members of the applicant as named in the enclosed list of members and others. The members of this society comprise of workmen staff (popularly called as 'Award Staff') as also officer employees on whose behalf or concerning whom settlements and Memorandums of Understandings have been made, on common dates, as specifically mentioned therein.

- I. Shri. M. V. Nair, Chairman & MD, Union Bank of India, Union Bank Bhavan, Nariman Point, Mumbai 400021.
- II. Shri. M. D. Mallya, Chairman of & MD, Bank of Baroda, Baroda House, Bandra-Kurla Complex, Bandra East, Mumbai 400051.
- III. Shri. R. Sridharan, a public servant (whose addresses are not known to the complainant)
- IV. Shri. Narayanan Raja, a public servant(whose addresses are not known to the complainant)
- V. Shri. K. Ramakrishnan, a public servant(whose addresses are not known to the complainant)
- VI. Shri. B.B. Das, a public servant(whose addresses are not known to the complainant)
- VII. Shri. Rajeev Rishi, a public servant(whose addresses are not known to the complainant)
- VIII. Shri. K. Unnikrishnan, a public servant, Indian Bank's Association, World Trade Centre Complex, Centre I, Units 1,2 & 4, 6th Floor, Cuffe Parade, Mumbai-400 005. Tel.:91-22- 22174040, Fax:91-22-22184222/22154131
- IX. Shri. M. Venugopal, a public servant, Indian Bank's Association, World Trade Centre Complex, Centre I, Units 1,2 & 4, 6th Floor, Cuffe Parade, Mumbai-400 005. Tel.:91-22- 22174040, Fax:91-22-22184222/22154131

(The addresses and official positions of persons referred in serial number III to VII are not known)

- 3) Since the aforementioned 9 persons were / have been appointed by the Central Government and/or have been working or have worked under the control of Central Government, the applicant hereby respectfully request for a permission to initiate appropriate criminal proceedings in its own name or in the name of its member/s against the above named officials in appropriate court under appropriate law for trial of the offence/s committed by him / them as more specifically mentioned in the enclosed statement of case, purpose and objet.
- 4) Kindly accord the necessary permission at the earliest to file the criminal complaint before the Judicial Magistrate for further police investigation.
- 5) If further time is required to process the application for permission, the same may kindly be informed to me with the likely time required, immediately.

Yours faithfully,

For Resigned Bank Employee's Welfare Association,

Mutnuri Bharatha Sastry  
Honorary Secretary

CC to:

- i) Shri. M. V. Nair, Chairman & MD, Union Bank of India, Union Bank Bhavan, Nariman Point, Mumbai 400021, India.
- ii) Shri. M. D. Mallya, Chairman & MD, Bank of Baroda, Baroda House, Bandra-Kurla Complex, Bandra East, Mumbai 400051, India.

**Annexures:**

- 1) Statement of Case, Purpose and Object
- 2) Bank Employee's Pension Regulations, 1995
- 3) Document signed by the proposed accused on wage revision, on 27.03.2000
- 4) Document signed by the proposed accused on wage revision, on 26.02.2005
- 5) Document signed by the proposed accused on wage revision, on 27.11.2009
- 6) Document signed by the proposed accused on wage revision, on 27.04.2010
- 7) Document signed by the proposed accused on pension option, on 27.04.2010
- 8) Copy of memorandum sent to Shri. M D Mallya, Chairman of IBA and the IBA dated 08.11.2011
- 9) Copy of judgment of the Honorable Supreme Court in the matter of Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Ors (AIR1976SC322)
- 10) List of victims and persons against whom the crime has been committed

## STATEMENT OF CASE, PURPOSE AND OBJET

### (Annexure-1)

- 1) A settlement was reached between Indian Bank's Association (IBA) and a bank employee's union called 'All India Bank Employees Association' (AIBEA) on 29.10.1993 for providing pension to bank employees, in lieu of employer's share of Provident Fund (PF) for those who wish to opt for pension. A pension regulation, called "Bank Employee's Pension Regulation, 1995" was also formed by the above two parties, thereby providing guidelines and directions as to how the pension options are to be offered, the amount of pension, rates of pension and the eligibility for pension, corpus of pension to be made, persons who should make contributions to the corpus, the rate of contribution by the employees desirous of opting for pension, etc. The draft prepared by the above two parties was finalized in to a 'subordinate legislation' with approval of the Govt. of India and was published in the Government of India gazette on 29.09.1995 (**Annexure-2**). The Pension Regulation, 1995 also provides for family pension to the spouses and dependents of pensioners. The 'Bank Employee's Pension Regulation, 1995' was not made applicable to the employees who did not opt for pension and those who wanted to continue with the then existing scheme of PF.
- 2) As per the Bank Employee's Pension Regulation, 1995, the pension to bank employees was of contributory nature that is contributory by both management of the banks and also by the bank employees willing to opt for pension, at the rate of 10% of the basic pay of the employees opting for pension in lieu of PF. There was no case for the non-pension optees (that is PF optees) to contribute from their wages or otherwise to the pension fund for servicing of or creation of a fund or a corpus for rendering pension to the pension optees. This was obvious because the non-pension optees were not to draw any benefit of pension from the creation of the said fund or the corpus.
- 3) When the pension was offered to the employees for the first time in 1995 as a consequence of the settlement dated 29.10.1993 and framing of the Bank Employees Pension Regulation, 1995 referred above, some employees opted for pension in lieu of PF and some employees did not. Those who did not opt for pension were not eligible for pension and continued to be governed by the PF scheme.
- 4) Many employees did not opt for pension because the Bank Employees Pension Regulation, 1995 carried certain draconian clauses to the prejudice of the employees; such as pension was subjected to forfeiture if the employee participates in a lawful strike. Similarly, the pension was available only for 20 years of service. After the options were obtained and the doors for pension were shut, the pension rules were modified and liberalized by the above two parties and the negative clauses in the pension rules were removed in 1998, 1999 and 2000 and qualifying service for pension was reduced to 15 years. However, no fresh option was given to the employees who did not opt for pension in the year 1995. The IBA and AIBEA have conspired in doing this to deprive same pension to all the employees.
- 5) Neither the settlement dated 29.10.1993 nor the Bank Employee's Pension Regulation, 1995 calls for any contributions to pension corpus / fund by employees who have not opted for pension. This is obvious because the non-pension optees would not derive any benefits of pension since they were to get PF benefits only and the Bank Employee's Pension Regulation, 1995 specifically prohibited contribution by the PF optees to pension fund. Thus, as per the above scheme, the pension scheme was to be funded and serviced by the bank management and the pension optee employees, while the non-pension optees were not to contribute to pension since they were to get only a fixed PF of 10 percent.
- 6) Subsequently, both the above parties arrived at a wage revision settlement on 27.03.2000 (called as '7<sup>th</sup> Bipartite settlement') thereby implementing the settled practice of wage revision to bank employees after

every 5 years. However, the said wage revision settlement had an arbitrary clause making **compulsory deductions from the wages of the pension optees as well as the non-pension optees, equally**, at the rate of 8.25 percent (that is 50 percent of the wage rise) towards the pension fund. This deduction from the wages of non-pension optees was made effective from 01.11.1997 till the end of their service tenure. There were no reasons or justifications given in the settlement as to why deductions from the wages of non-pension optees have been made towards the pension fund. When asked by the non-pension optees about the reasons for such unlawful deductions, the representatives of IBA and AIBEA stated and assured that such deductions are being made from the non-pension optees also, so as to create a large pension corpus so that the non-pension optees too could be considered for one more option of pension, as demand for one more option for pension was under consideration of the IBA and the AIBEA. Again, the issue of one more option of pension to non-pension optees was shown to have been under consideration of the parties, as the two parties were sole bargaining agents for determining the service conditions for the bank employees. The non-pension optees were unduly influenced to believe the assurances of the representatives of IBA and AIBEA and therefore consented for deductions from their wages. (A copy of the settlement is enclosed as **Annexure-3**)

- 7) Subsequently, both the above parties arrived at another wage revision settlement on 26.02.2005 (called as '8<sup>th</sup> Bipartite settlement') thereby implementing the settled practice of wage revision to bank employees after every 5 years. The said wage revision settlement also had an arbitrary clause making **compulsory deductions from the wages of the pension optees as well as the non-pension optees, equally**, at the rate of 9.25 percent (that is 50 percent of the wage rise) towards the pension fund. This deduction from the wages of non-pension optees was made effective from 01.11.2002 till the end of their service tenure. There was no reason or justification given in the settlement as to why deductions from wages of non-pension optees have been made for servicing pension to pension optees alone. When asked by the non-pension optees about the reasons for such unlawful deductions, the representatives of IBA and AIBEA stated and assured that such deductions are being made from the non-pension optees also, so as to create a large pension corpus so that the non-pension optees too could be considered for one more option of pension, as demand for one more option for pension was under consideration of the IBA and the AIBEA. Again, the issue of one more option of pension to non-pension optees was shown to have been under consideration of the parties, as the two parties were sole bargaining agents for determining the service conditions for the bank employees. The non-pension optees were unduly influenced to believe the assurances of the representatives of IBA and AIBEA and therefore consented for deductions from their wages. (A copy of the settlement is enclosed as **Annexure-4**)
- 8) Both, IBA and AIBEA arrived at one more written understanding on 27.11.2009 in the course of the 9<sup>th</sup> bipartite settlement-wage revision and to consider one more option of pension. In the said written understanding dated 27.11.2009 it was agreed by the two parties that **"the said wage revision will be effective from 01.11.2007; the annual wage increase will be Rs.2577 crores; the additional cost of pension on account of wage revision in excess of statutory contribution of 10% of pay will be shared equally between management and employees (13% of pay each) and the share of employee so calculated will be deducted from the agreed wage increase while revising wages and allowances"**. (A copy of the settlement is enclosed as **Annexure-5**)
- 9) Consequent to and as agreed by and between the two parties in the said written understanding dated 27.11.2009, the IBA and AIBEA arrived at one more wage revision settlement on 27.04.2010 (called as '9<sup>th</sup> Bipartite settlement') thereby implementing the settled practice of wage revision after every 5 years. An arbitrary clause was also inserted in the 9<sup>th</sup> bipartite settlement on wage revision, thereby making **compulsory deductions from the wages of the pension optees as well as the non-pension optees, equally**, at the rate of 13 percent (that is 50 percent of the wage rise). This time the deduction from the wages of non-pension optees was made effective from 01.11.2007 till the end of their service tenure. (A copy of the settlement is enclosed as **Annexure-6**)
- 10) Thus, the IBA and AIBEA, in the name and under the disguise of collective bargaining settlement, effected **deductions from the wages of the non-pension optees**, at the rate of 50% of wage revision, with effect from

01.11.1997 to 27.04.2010 and the wages of non-pension optee employee's were taken away, in the name of pension fund. The amount so deducted and taken away, on a cumulative basis exceeds Rs.15 lacks per non-pension optee, besides interest and consequential losses.

- 11) On the same day (that is on 27.04.2010), in fact on the same table, the representatives of IBA and the AIBEA clandestinely signed another settlement thereby offering one more option of pension to those who did not opt for pension in 1995. Though the voluntarily retired and resigned employees were subjected to deductions of wages in the name of creating corpus for pension right from 01.11.1997, strangely enough, the settlement dated 27.04.2010 on pension option excludes voluntarily retired and resigned employees. (A copy of the settlement is enclosed as **Annexure-7**)
- 12) Thus, while extending one more option of pension to non-pension optees on 27.04.2010, as narrated above, the representatives of the IBA and AIBEA clandestinely omitted and ignored the voluntarily retired and resigned employees from offering one more option for pension, even though forceful and arbitrary deductions were made from their wages for 13 years starting from 01.11.1997 till 27.10.2010 and beyond. Thus, the representatives of the IBA and AIBEA forcibly made deductions from the wages of voluntarily retired and resigned employees but deprived them the benefits of pension. Both IBA and AIBEA consciously and intentionally omitted the voluntarily retired and resigned employees from the benefits of pension, however defrauded and misappropriated the monies deducted from the wages, as explained above.
- 13) Under the guise of collective bargaining settlements on wage revision of 27.03.2000, 26.02.2005, 27.11.2009 and 27.04.2010, the above two parties forced the contributions on the poor employees in the name and under the guise of creating pension fund, who later on, after serving for up to 38 years of services either voluntarily retired or resigned from the services. However, when the offer of one more option of pension to non-pension optees was made on 27.04.2010, the two parties omitted these very employees feigning to be acting under concert of a collective bargaining settlement and signed the settlement on 27.04.2010 thereby excluding these employees. The two parties have recovered huge money from the voluntarily retired and resigned employees in the form of compulsory deductions under the guise of 3 successive collective bargaining settlements in a span of 13 years, running in to crores of rupees, earned interest thereon and misappropriated, defrauded and cheated the employees from whom the monies were deducted. The two parties thus deliberately omitted and ignored the voluntarily retired and resigned employees from the coverage of the settlement dated 27.04.2010, from whom monies were recovered in the name of deductions towards pension.
- 14) The two parties, in this way, to the extent of the aforesaid amount, with ulterior motives, malafide intensions, ill will and with a deceitful objectives, defrauded, cheated, manipulated, siphoned off and diverted the funds to unconcerned person's accounts / benefits; misappropriated, misrepresented and fudged the books of accounts / records; deceitfully omitted to maintain the records of collection and end use of funds collected from the employees; with a pre-meditated objectives of achieving personal gains, benefits and self aggrandizements and passed on and shared the amounts so collected, to and for the benefits of their supports, members and well-wishers.
- 15) The two parties also misappropriated a public fund of Rs.9116 crores (Rs.6000 crores + Rs.3116 crores) drawn from the participating public sector banks in the name of bank management's contributions for funding the pension. This amount has been drawn from the banks in the name of pension benefits to all employees however; the benefits have been extended to a limited group of employees including the main accused namely. Shri. M. V. Nair and Shri. M. D. Mallya, by misuse of their official positions. Please refer to the two settlements dated 27.04.2010 and the prior understandings between the parties.
- 16) The two parties have deliberately omitted the voluntarily retired and resigned employees from one more option of pension even though these employees have completed the qualifying service for pension of 15 / 20 years. The two parties have conspired with each other in robbing out the deductions made from the

voluntarily retired and resigned employees for over 13 years so also the public funds to the extent of Rs.9116 crores, under the pretext of and in the name of collective bargaining settlement. The alleged robbing of the contribution of voluntarily retired and resigned employees has been done by the two parties by taking opportunity of and taking undue advantage of absence of representation by the voluntarily retired and resigned employees in the collective bargaining process. The collective bargaining process was concluded by the two parties in close doors by keeping the voluntarily retired and resigned employees at bay. The representations and requests made by the voluntarily retired and resigned employees were ignored and trashed out.

- 17) The two parties have suppressed the acts of deductions from the wages of the voluntarily retired and resigned employees while making the impugned pension settlement dated 27.04.2010. An attempt is made by the two parties to show that deductions were made by virtue of one set of settlements while the pension is offered by another set of settlements, though the two settlements have been signed by the same parties, by the same officials on the same day, on the same table at the same venue and on the same table. The criminal intention of the two parties is manifest from the contents of the settlement. While providing for deductions from the wages (in one of the settlements dated 27.04.2010), the parties did not make any discrimination between the voluntarily retired employees, resigned employees, special VRS optee employees, superannuated employees, deemed retired employees, dead employees and serving employees. However, while offering pension (through another settlement signed on the same day that is on 27.04.2010), a clear discrimination has been made between the voluntarily retired & resigned employees on one hand and special VRS optee employees, superannuated employees, deemed retired employees, dead employees and serving employees, on the other. The second category of employees has been bestowed with pension benefits while the first category has been deprived the benefits of pension.
- 18) The IBA and the AIBEA and other unions have been refusing to respond to the representations of the voluntarily retired and resigned employees who have completed the qualifying services up to 38 years and from whose wages deductions have been made towards pension at the aforesaid manner. Neither IBA nor AIBEA entertained any representation from the voluntarily retired and resigned employees (**Annexure-8**).
- 19) The representatives of IBA and the AIBEA, in terms of their two settlements dated 27.04.2010 and the two previous settlements have caused illegal deductions from the wages of the non-pension optees, **assured to offer one more option of pension to all non-pension optees but misappropriated the amount so deducted from these employees to their personal benefits, gains and aggrandizement as also passed on the benefits to their well wishers and supporters.**
- 20) Similarly, neither IBA nor the individual banks on whose behalf the impugned settlements were made have passed any accounting entries to account for the deductions made from the above two categories of employees (voluntarily retired and resigned employees) nor kept and / or maintained the books of accounts of the money so deducted from the employee's wages nor even refunded the monies so deducted back to the employees if they were not made eligible for pension, for reasons whatsoever.
- 21) The representatives of the IBA and AIBEA have thus committed fraud on the applicant and other employees named in the list attached, in the name of and acting under a collective bargaining settlements under the provisions of the Industrial Disputes Act, 1947 / Memorandum of Understandings with the unions and associations and misappropriated the money deducted from the voluntarily retired and resigned employees. The Hon Supreme Court of India in the case of **Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Ors (AIR1976SC322)** while laying down the characteristics of collective bargaining settlement ruled that "We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements." (**Annexure-9**)
- 22) The below named 9 public servants posing to be acting on behalf of the individual management of the banks showing to be acting in the name of 'IBA' and in conspiracy with the persons signing the enclosed document

purported to be made as and in the name of a “settlement” for and on behalf of AIBEA and some other unions, have thus, committed following offenses punishable under Indian Penal Code, Code of Criminal Procedure, Prevention of Corruption Act and such other Acts:

- a) Illegally deducted certain funds from the wages of employees in the name of creating pension fund /corpus.
- b) Misappropriated the monies so deducted from the wages of voluntarily retired and resigned employees from different banks.
- c) Cheated to these categories of employees first, by promising / assuring that they would get the pension benefit but omitted them when they ceased to be employees.
- d) Committed criminal breach of trust.
- e) Forged and fabricated the books of accounts of the bank by not maintaining correct and transparent books of accounts of the wages deducted for and in the name of pension fund / corpus.
- f) Deliberately and intentionally omitted and circumvented from maintaining and up-keeping of the books of accounts.
- g) Forged, manipulated, exaggerated, over-evaluated, over-estimated, misrepresented and fudged the books of accounts including their quarterly and annual balance sheets of the banks and thereby cheated and deceived the employees, customers, investors, shareholders, statutory auditors, general public and the regulators.
- h) Abused the official position to earn personal gains to themselves (all the 9 public servants who were not covered and entitled to pension till 27.04.2010 but got the pension benefits out of the impugned settlement) and extended and passed on illegal gains to their supporters, to the detriment and prejudice of and at the cost of the voluntarily retired and resigned employees.

23) The below named 9 public servants have committed following offenses punishable under the Indian Penal Code who have actively negotiated, deliberated, participated, drafted, hatched, masterminded, and pursued with the fellow accused and conspired with the other and perpetrated the offenses, as under:

- a) Criminal conspiracy under section 120-A and 120-B of the Indian Penal Code.
- b) Dishonest misappropriation of property under section 403 of the Indian Penal Code.
- c) Criminal breach of trust under section 405 and 406 of the Indian Penal Code.
- d) Criminal breach of trust by public servant, banker and agent under section 409 of the Indian Penal Code.
- e) Passing on of and receiving of stolen property under section 410 and 411 of the Indian Penal Code.
- f) Assisting in concealment of stolen property under section 414 of the Indian Penal Code.
- g) Cheating under section 415 of the Indian Penal Code.
- h) Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect, under section 418 and 419 of the Indian Penal Code.
- i) Cheating and dishonestly inducing delivery of property, under section 429 of the Indian Penal Code.
- j) Dishonest and fraudulent removal or concealment of property to prevent distribution among creditors, under section 421 and 422 of the Indian Penal Code.
- k) Dishonest and fraudulent execution of deed of transfer containing false statement of consideration, under section 423 of the Indian Penal Code.
- l) Dishonest and fraudulent removal or concealment of property, under section 424 of the Indian Penal Code.
- m) Mischief under section 425 and 426 of the Indian Penal Code.

24) The below named 9 public servants have thus actively negotiated, deliberated, participated, drafted, approved, consented, hatched, masterminded, pursued and conspired with others and perpetrated the offenses and have thus committed the offenses punishable under the Indian Penal Code and such other Acts and Rules.

- iii) Shri. M. V. Nair, a public servant, then Chairman of IBA and the presently Chairman & MD of Union Bank of India, Union Bank Bhavan, Nariman Point, Mumbai 400021, India.



- iv) Shri. M. D. Mallya, a public servant, presently Chairman of IBA and the then Deputy Chairman of IBA and also presently Chairman & MD of Bank of Baroda, Baroda House, Bandra-Kurla Complex, Bandra East, Mumbai 400051, India.
- v) Shri. R. Sridharan, a public servant, Mumbai 400021, India.
- vi) Shri. Narayanan Raja, a public servant, Mumbai 400021, India.
- vii) Shri. K. Ramakrishnan, a public servant, Mumbai 400021, India.
- viii) Shri. B.B. Das, a public servant, Mumbai 400021, India.
- ix) Shri. Rajeev Rishi, a public servant, Mumbai 400021, India.
- x) Shri. K. Unnikrishnan, a public servant, Mumbai 400021, India.
- xi) Shri. M. Venugopal, a public servant, Mumbai 400021, India.

(All above persons as parties on behalf of IBA to the settlements dated 27.11.2009 and 27.04.2010)

- 25) The Society and / or some of the victims / affected persons hereby contemplate initiation of appropriate criminal proceedings against the above named two persons besides other persons, whose names, official positions and designations are given herein below for the reasons mentioned in the enclosed statement of case, purpose and objet, for committing offenses of crime as specifically committed by them against the members of the Society and other persons named in the enclosed list of persons. (A copy of the persons affected is enclosed as **Annexure-10**)
- 26) The above referred settlements and agreements have been signed, inter-alia, for and on behalf of the banks named in **Annexure-10**. Each and every provision of the settlements and agreements referred herein are made applicable to the management and employees and officers of the banks named in **Annexure-10**. The members of the applicant were in the employment of the banks covered by all the settlements referred herein. The members of the Society have served for up to 38 years qualifying service and have left their services due to reasons beyond their control, such as continued ill health and non-congenial working conditions. The members of the Society have thus contributed from their wages towards pension fund for up to 13 years continuously. The deductions made from the wages of the members of the Society (as per **Annexure-10**) has been defrauded, misappropriated and otherwise illegally and unlawfully disposed, robbed and stolen etc, by the above named two parties, by way of criminal breach of trust, criminal conspiracy, forgery, theft, etc, under the guise of a settlement.
- 27) A clear cut case of "**CRIMINAL BREACH OF TRUST**" has been made out against the above named 9 public servants and union office bearers in this paragraph, for sanction of prosecution:

**Section 305 of the Indian Penal Code reads as under:**

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

[Explanation [1]

A person, being an employer <sup>3</sup>[of an establishment whether exempted under section 17 of the Employees' Provident funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] *who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]*

## [Explanation 2

A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

## Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z goes on a Journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with Property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

## Section 306 of the Indian Penal Code reads as under:

“Whoever commits criminal breach of trust shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine or with both.”

By virtue of the settlements dated 27.03.2000, 26.02.2005, 27.11.2009 and 27.04.2010, reached by and between the two parties, referred herein above, deductions have been made from the wages payable to the workmen and employees in the name of contribution towards pension.

Pension under Bank Employee's Pension Regulation, 1995 includes and provides for retirement pension and family pension as well. Please see Regulation 5 of Bank Employee's Pension Regulation, 1995 (**Annexure-2**). Thus the 4 settlements referred herein above have provided for deductions from wages of workmen and officers and deductions from the wages have in fact been done by the actions of the above two parties, from the wages / salaries of the workmen / employees named in **Annexure 10**. The above two parties were thus entrusted with the amount of such contributions so deducted from the wages, but two parties have defaulted in the payment of such contributions to the pension fund / family pension fund. Thus the above named two parties especially the 9 public servants names above have clearly committed criminal breach of trust, as defined and included in section 305 of the Indian Penal Code, against the employees named in **Annexure-10** and thereby rendered liable for punishments under section 306 of the Indian Penal Code.

28) Some of the other co-conspirators in this countrywide financial scandal are given here below. These union officials have conspired with the 9 public servants named above and pretended to be acting as representatives of all the employees, although they were never authorized to act on behalf of the voluntarily retired and resigned employees. The names and addresses of the union and union officials is shown to be as "All India Bank Employees' Association and Convener of UFBEU, situated at Prabhat Nivas, Singapore Plaza, 164, Linghi Chetty Street, Chennai 600 001. No permission is required for prosecution of these union officials since they are not public servants.

- 1) Shri Rajen Nagar
- 2) Shri C H Venkatachalam
- 3) Shri N K Gaur
- 4) Shri P N Tewari
- 5) Shri Mahesh Mishra
- 6) Shri J P Sharma
- 7) Shri V R Utagi
- 8) Shri B S Rambabu
- 9) Smt. Lalita Joshi
- 10) Shri D D Rustagi
- 11) Shri P R Karanth
- 12) Shri V K Sharma
- 13) Shri Satish R Khanolkar
- 14) Shri Gour Das
- 15) Shri P P Varghese
- 16) Shri R Vijayakumar
- 17) Shri E Arunachalam

29) The term settlement referred here means and included settlements and Understandings reached by and between the IBA and the unions of workmen and officers alike, jointly, separately and concurrently.