VII. CONCLUSION AND SUGGESTIONS

Hire-purchase as a source of financing of commercial vehicles has shown a spectacular growth since India's Independence in 1947. It can be claimed that the automobile industry would not have achieved the growth which it has been able to record during the last three or four decades but for the strong and sustained support provided by hire-purchase financiers - joint stock companies, firms and individuals - along with banks. Hire-purchase continues to be popular with several industries, especially the transport industry, because of its many inherent and proven advantages.

Considerable case law has developed concerning various aspects of hire-purchase business in the absence of a specific hire-purchase law. The prevalent law structure engrafted on the pattern of British laws, makes it expedient to create the legal fiction of hire-purchase.

A fast developing economy with heavy and long term capital investment creates scarcity of funds and raises money cost. So long as tight money conditions under inflationary pressures continues to prevail rendering cheaper bank and institutional finance inadequate to meet the demand, hire-purchase will continue to hold on. Under normal conditions, when adequate finance would be available at normal rate of interest, hire-purchase will have to face a challenge for its existence. Such conditions, however, are not likely to materialise in the foreseeable future. The optimistic view that hire-purchase has a bright future takes for granted perpetuation of a tight money market and scarcity of funds under which hire-purchase will survive and prosper.

With this approach, it is desirable to make good the deficiencies of the system and to solve the problems and difficulties of the parties to hire-purchase transactions. This analytical study, which aims to do that, is divided into seven chapters.
The first chapter being introductory, deals with road transport with all its modes and aspects as an infrastructure of national economy; it explains the meaning and importance of commercial vehicles and hire-purchase. Need to study the topic reveals that hire-purchase has an assured and promising future in the economic advancement of every country, which is the reason why it has a worldwide appeal and acceptance.

The second chapter traces the history of commercial vehicles a hundred years back (1986 being the centenary year), their adoption and development in industrially advanced countries and their production and growth in India as a sequence of fast industrialisation after Independence. This chapter explains the various modes and systems of sale of commercial vehicles, hire-purchase being a major sales promotion device; this is followed by critical study of the various aspects of commercial vehicles.

The third chapter takes up the study of Hire Purchase System. After tracing the origin and development of the system in various countries through various evolutionary stages, the study proceeds to enunciate the agencies of hire-purchase. Next, the working procedures and accounting are dealt with in details. Money being the commodity in which hire-purchase companies deal in, the various sources of funds are examined. It proceeds to find out the merits and demerits of the system and the problems of hire-purchase companies and hirers.

The fourth chapter covers a study of all statutes and laws which have direct or indirect bearing on hire-purchase transactions, such as, Motor Vehicles Act 1939, Indian Contract Act 1872, Central as well as State sales tax Acts, etc. Certain other laws which interfere with hire-purchase transactions are laws pertaining to transportation of smuggled and contraband goods, contravention of prohibitory laws and forest products laws, with consequential seizure and confiscation of the vehicle used to commit the offences. Though
These offences and breaches of law are committed by the hirer with which the hire-purchase company is not at all concerned, confiscation of the vehicle drags the hire-purchase company into litigation to claim release of the vehicle in its favour as the legal and rightful owner of the vehicle. Next, the Hire Purchase Act 1972, enacted but not enforced, and the Personal Security Bill drafted and recommended by the Banking Laws Committee in 1977, are examined critically. (The suggested Commercial Hire Purchase Act is at Annexure XI). This chapter also covers the reports and findings of the various committees, commissions and study groups appointed by government and other statutory bodies.

The fifth chapter covers all aspects of general insurance which affect commercial vehicles and their hire-purchase including vehicle insurance, insurance of employees of commercial vehicle operators and third party risk insurance. General insurance performs another function of issuing hire-purchase guarantee policies in favour of banks to cover their risk in cash credit limits sanctioned to hire-purchase companies. This chapter concludes with examining the scope for wider coverage.

The sixth chapter deals with hire-purchase systems in foreign countries, with particular reference to USA and UK and proceeds to compare hire-purchase system in India with hire-purchase systems in foreign countries. This chapter studies, exhaustively as well as critically, leasing which has emerged recently as a powerful supplementary mode of financing and the detailed method of proper mix of hire-purchase and leasing so as to derive the optimum benefits out of the combination of both these modes of financing.

The seventh chapter encompasses conclusions and offers suggestions.

There are eleven annexures referred to in the body of the thesis.
The various parties connected with hire-purchase transactions face problems in their divergent fields of operation. The following suggestions aim to sort out and remove these problems and standardise this mode of financing so that it serves its purpose adequately.

The suggestions hereunder are the outcome of deep and analytical study of all aspects of hire-purchase and remedies to ensure smooth running of hire-purchase contracts. The benefits derived as a result of implementation of these suggestions would be shared by all parties. Care has been taken that no suggestion is made to benefit one party at the cost of others. For instance, expeditious settlement of insurance claims is in the interest of the financier as well as the hirer. Likewise, procurement of funds by the financier in ample measure and at lower cost would result in reducing the hire charge. Measures suggested for prompt recovery of hire instalments would reduce collection cost to the financier and save the hirer from paying the late payment surcharge and extra collection expenses besides lowering the number of seizure cases. In short, cutting down of avoidable expenditure and reduction of the risk element by plugging loopholes and minimising the scope for malpractices both by the financier and the hirer, would bring down hire-purchase costs to be shared by the financier with the hirer.

The entry of vehicle manufacturers in a big way offering hire-purchase at cheap rate as a means of promoting sales, as well as advent of new hire-purchase and leasing firms and companies in the field have set into motion the highly desirable competition. Competition has the in-built device of self-correcting irregularities and the inefficient and unfair units automatically and ruthlessly get ousted from the field. The cumulative effect of these developments would sharpen competition and the customer, that is, the hirer, would be the ultimate beneficiary under competitive pressures.
SUGGESTIONS

The suggestions are classified and grouped under the following heads:

1. Sources of funds
2. Taxation
3. General insurance
4. Seizure of vehicle
5. Accounting
6. Motor Vehicles Act
7. Leasing
8. Miscellaneous

1. Sources of funds

(a) Bank priority: A major portion of bank advances earmarked for the transport industry, goes to operators for purchase of vehicles, as small operators owning up to six vehicles are covered by bank priority while the hire-purchase companies, which perform the same function of financing hirers to acquire vehicles, are not included in the priority of banks for cash credit limits.

It is suggested that hire-purchase companies should be included in the bank priority for fresh sanction and also enhancement of existing cash credit limits. Wider bank facilities thus available would enable hire-purchase companies to render extensive service in financing hire-purchase transactions.

(b) Guarantee Business: Poor recovery has been the bane of commercial banks which advance loans directly for purchase of vehicles. With an extensive network of branches, banks cannot manage nor afford to establish collection machinery at every branch. A centralised regional collection machinery has little chance to be effective as compared with hire-purchase companies.
The suggestion is that banks should advance loans against vehicles on the guarantee of approved hire-purchase companies for the full amount of advances on a reasonable commission basis. All the three parties concerned with this arrangement would be benefitted, namely, (i) banks would be assured of hundred per cent recovery of each instalment when due whether the loanee makes payment or not, because on his failure, the hire-purchase company will make payment; (ii) the hire-purchase companies with effective collection machinery will have this additional source of income in the shape of commission, and (iii) the loanee who fails to fulfil the rigid norms of the bank, may succeed in getting bank loan through the guarantee of the hire-purchase company.

(c) IDBI finance: Ample funds are available with the Industrial Development Bank of India (IDBI) for all industries but the share of the transport industry is meagre for various reasons. The illiterate or semi-literate and resourceless operators are not in a position to complete the long drawn procedures and documentation as well as obtain guarantee of a bank recognised by IDBI. Branch managers of banks are not authorised to accept guarantee which needs approval of the regional or head office. Moreover, banks charge a commission of 1% for such a guarantee as well as demand deposit of 10 to 20 per cent of the total amount of guarantee (loan plus future interest).

It is suggested that acceptance of guarantee should be extended by IDBI to selected hire-purchase companies in addition to banks. Since hire-purchase companies know the operators and their credit worthiness personally, they would curtail and expedite the formalities and make it much easier for obtaining IDBI loans. The hire-purchase companies would earn guarantee commission as well as deposits from the beneficiaries of IDBI finance. The beneficiaries would get cheaper finance at 14 or 15% p.a. on reduced balance basis, than bank finance at 17.5% p.a.
(d) Financial Institutions: There are autonomous bodies like the General Insurance Corporation, Life Insurance Corporation, Unit Trust of India as well as IDBI, ICICI, IFIC and IRBI with vast investible funds. These corporate bodies in the public sector could be persuaded to formulate a scheme to channelise a fraction of their ample funds to be placed at the disposal of hire-purchase companies. The General Insurance Corporation should take the lead because it is the recipient of insurance premium from commercial vehicles which are mostly financed under hire-purchase. Such vehicles are invariably insured comprehensively and the high vehicle insurance premium forms a substantial part of the income of GIC. This would therefore be a reciprocal gesture because larger number of vehicles under hire-purchase would bring in larger insurance premium.

Disbursement of funds by these corporate bodies directly to hire-purchase companies may not be practicable. The better course would be to place at the disposal of commercial banks funds earmarked for hire-purchase. The banks would then be in a position to release these funds to hire-purchase companies by sanction of fresh limits and enhancement of existing limits.

(e) Non-resident Indian Investment: Another source of additional funds could be non-resident Indian investment through a package of incentives to be spelt out by government. Such investment would earn foreign exchange for government. The non-resident investor may, if he so desires, be allowed to receive back the principal amount in the currency of his country of residence on expiry of the period of investment. The interest portion earned in India should, however, not be allowed to be funnelled out of India. Care should be taken that the non-resident investor is not subjected to double taxation.

(f) Public Deposits: Very few hire-purchase companies succeed in mobilising public deposits near about the
eligibility of ten times of own funds permissible under RBI directions. The Reserve Bank of India, Department of Financial Companies, in its study published in June 1983 issue of RBI Bulletin reported that the aggregate of deposits held by hire-purchase companies was only 2.83 times of their aggregate net own funds. A chunk of domestic savings is mopped up by government offering tax benefits and incentives in respect of investment in National Savings Certificates, Public Provident Fund and Unit Trust of India, etc. besides expenditure like insurance premium. Another chunk is mopped up by big names in industry whose shares carry a very high and rising premium, convertible debentures being a special attraction. There are too many rival deposit mobilisers to scramble for whatever meagre is left of domestic savings.

The main object of very liberal deposit mobilisation by hire-purchase companies was to reduce their dependence on bank borrowing so that funds available with banks could be utilised to meet developmental needs in other spheres. In order to fulfil that objective by enabling hire-purchase companies to attract deposits upto the limit of eligibility, the following suggestions are offered:

(i) Public deposits with hire-purchase companies should be covered under section 80-C of the Income Tax Act as well as under section 5(1)(xxiii) of the Wealth Tax Act.

(ii) At present hire-purchase companies are not allowed to pay more than 15% p.a. interest on public deposits as per directions of the Reserve Bank of India. The suggestion is that, in order to attract more public deposits, hire-purchase companies should be allowed to pay interest at a rate at par with bank's lending rate of interest.

(iii) Under income-tax assessment, the onus of proving the genuineness of a deposit lies on the assessee. The ITO may direct the assessee to produce in person before him depositors as per random list chosen by him. Even if a single depositor fails to appear before the ITO or refuses
to oblige the assessee, the ITO may add back the amount of deposit treating it as assessee's own money brought in the business under a fictitious name. It is suggested that after obtaining the full address of depositors, the assessing ITO, in his official authority, should summon depositors for verification of the genuineness or otherwise of the deposit.

(iv) At present partnership firms doing hire-purchase business can accept public deposits upto 25 depositors per partner with a maximum of 250 depositors. The suggestion is that this limit should altogether be removed.

(g) Joint venture hire-purchase: Some leasing companies are torch-bearers of joint ventures with commercial banks and the International Monetary Fund.

The suggestion is that commercial banks should formulate a joint venture scheme for hire-purchase in partnership with hire-purchase companies of their choice. While the profit sharing and other terms should take into account the contribution of each, the banks should provide major part of finance and the hire-purchase companies should assume responsibility for recovery of dues. Under such an arrangement, the advances by banks will be safe and the hire-purchase companies will have a large turnover with low investment.

2. Taxation

(a) Disparity in the rates of sales tax: The rate of sales tax differs from state to state and the wide disparity of rates between neighbouring states is detrimental to the industry, trade and commerce of the high sales tax state. This also leads to devious means to evade sales tax. The glaring instance is the sales tax of only 3% at Silvassa upto end of 1984 and the same rate at Daman/Goa since then as against 10 or more per cent in some other states. Attracted by this wide disparity in the rates of sales tax, purchasers in distant states take delivery of the chassis (as well as
spare parts and engineering goods) at Daman and transport the chassis to the state in which it is desired to ply. The national loss as a result of this man-made disparity can be gauged by the unnecessary transportation of the chassis over long distances merely to save sales tax. This circuitous sales process also requires unnecessary duplication of administrative, sales and accounting work for the seller and for the purchaser.

The suggestion is that there should be uniform rates of sales tax and identical rules and procedures throughout the whole country which shall effectively eradicate these evils.

(b) Multiple sales tax: A vehicle under hire-purchase may be subjected to sales tax twice, once when the vehicle is purchased by the hire-purchase company from the dealer and secondly on conclusion of hiring when the hirer purchases the vehicle. There is no tax liability if both these sales take place in the same state. Transport vehicle is not a stationary asset like plant and machinery but moves through various states. Often it happens that the first sale took place in one state and the vehicle was in another state at the time of termination of the hire-purchase contract when the second sale took place. The Supreme Court of India, in its Judgement dated 1-5-1974 in the Instalment Supply Ltd. vs. Sales Tax Officer, Ahmedabad, held that: "Nor can there be any objection to Gujarat levying a tax in respect of the same goods even though those goods may have been subjected to tax earlier by the Delhi State."

The suggestion is that no sales tax should be levied on the second sale at the time of termination of the contract even if the two sales take place in different states.

(c) MODVAT: The price of a commercial vehicle includes not only the normal price but also sales tax charged at various stages of production. In fact it becomes a multiple sales tax. For instance, Telco purchases components from
its ancillaries which pay sales tax on all their purchases of raw materials. This has the cascading effect of multiple sales tax.

The suggestion is that sales tax should also be covered under MODVAT with the provision that this tax relief should be available even if the ancillaries and the vehicle manufacturers are in different states. If this is done, it will reduce the cost of the vehicle considerably. Through the availability of instant credit of the sales tax paid on the in-puts and consequential reduction in cost and interest charge will benefit the manufacturer as well as the hirer.

(d) **Investment Deposit Account**: The budget for 1986-87 introduced a Finance Bill to insert a new section 32AB in the Income Tax Act relating to Investment Deposit Account to replace Investment Allowance. Under the new section an assessee will be allowed a deduction upto 20 per cent of profits or gains of business or profession if that amount is deposited with the Development Bank. The proposed section 32AB is restrictive excluding a number of categories of assessees.

It is suggested that the scope of the proposed section 32AB may be liberalised and widened to extend eligibility to leasing, hire-purchase and transport operators. There should also be a provision in the Act that IDBI should release the amount to the concerned bank to advance the same to a hire-purchase/leasing company subject to the condition that the amount is utilised by it for hire-purchase/leasing. This suggestion will enable the hire-purchase/leasing companies to render their services in a better way because it will meet their requirement of finance to some extent.
3. General Insurance

(a) Stoppage insurance premium: Every vehicle under hire-purchase agreement is comprehensively insured. When a vehicle is under major repairs either on account of an accident or otherwise, it continues to be exposed to the risk of theft, burglary, civil commotion etc. but not exposed to road risk.

The suggestion is that when a vehicle comprehensively insured is off the road for over a month, there should be no liability for the portion of the insurance premium covering road risk for the duration and the insured should be entitled to the refund of the same.

(b) Police investigation report: A claim arising out of theft or robbery is withheld by the insurance company pending final investigation report of the police. Almost invariably final investigation reports are not submitted for years and it is the hire-purchase company who suffers on account of non-settlement of the claim to which it is entitled under the hire-purchase agreement, besides the hirer to whose account the claim amount is credited.

It is suggested that settlement of a claim should not be withheld on account of non-submission of final investigation report by the police. The correct course would be to wait for the report for a specified time, say, three months, whereafter the claim should be settled for the full amount against an indemnity bond of the hire-purchase company.

(c) Rejection of claim: The insurance company reserves the right to reject the claim outright for non-fulfilment or breach of any condition of the policy, such as, overloading, driving by an unlicensed person, absence of valid permit, etc. The claim, though genuine, is thus vitiated and it is the hire-purchase company which sustains the loss. The hirer stops payment of instalments after the claim has been made with the hope that the insurance company will pay the claim.
Thus rejection of the claim converts it into a write-off and subsequently a bad debt.

It is suggested that a lapse on the part of the hirer should not be an excuse for rejection of the claim by the insurance company. Defiance of Motor Vehicles Act and other laws attract action under those laws which provide for deterrent punishment. Outright rejection of the claim by the insurance company is a double punishment for the same offence. This is not justifiable as it is an unwarranted punishment for the hire-purchase company, which has nothing to do with the operation of the vehicle on hire.

(d) Interest on insurance claim: In principle, a claim under an insurance policy is created instantly with the happening of an incident covered by the policy. The time taken between the occurrence of the incident and the actual payment of the claim is on account of lengthy procedure.

It is suggested that interest at bank's lending rate be added to the amount of the claim from the date of the incident from which the claim arises to the date of payment of the claim. The liability to pay interest will minimise delay in settlement of claims.

(e) Indemnity Guarantee Policy (IGP):

(i) No utility: Banks advance loans and other credit facilities to industries, trade and commerce but no indemnity guarantee policy is demanded from any of them. It is only in recent years that banks demand IGP issued by a unit of the General Insurance Corporation in respect of cash credit limits sanctioned by banks in favour of hire-purchase companies.

The suggestion is that the discriminatory practice of demanding IGP in respect of hire-purchase companies should be totally done away with as the risk of the bank is amply covered by the hire-purchase documents pledged with the bank with adequate margin as well as the status of the hire-
purchase company itself, and more particularly, in view of 'nil' claim ratio under such policies since their introduction. The Reserve Bank of India should issue directions to all commercial banks accordingly.

(ii) Premium: The rate of premium on indemnity guarantee policy issued by the General Insurance Corporation in favour of the lending bank against CC limits allowed by the bank to hire-purchase companies was 1%, raised to 1.5% from October 1985, which the bank passes on to the hire-purchase company.

It has been ascertained that the claim ratio under IGP has throughout been 'nil' as no hire-purchase company failed to repay its liability to the bank under HP limits. In the light of the 'nil' claim ratio, the suggestion is that the premium should be scaled down to a fraction per cent to cover administrative cost.

(iii) IGP coverage: The IGP issued by the insurance company in favour of a bank expires after completion of one year whereas the hire-purchase agreements covered by the IGP run for a much longer period, generally three years. Under the terms of the policy, the insurance coverage continues for the full duration of the hire-purchase agreement. An anomaly arises at the close of the year when the IGP expires and no fresh hire-purchase case can be lodged with the bank against the expired IGP. Renewal of the IGP for its full amount is of no use for the hire-purchase company because the CC limit cannot be overdrawn.

The suggestion is that this anomaly can be resolved by making the IGP a continuing coverage subject to yearly renewal as is the case with a cash credit limit. The risk covered by the IGP is not the notional ceiling of the policy, but the actual debit balance in the cash credit account which represents the indebtedness of the hire-purchase company to the bank. The insurance company should,
therefore, issue an open policy under which the premium should be charged on the actual utilisation. A better course would be to charge premium initially per case to cover risk for the entire duration of the hiring as is done by the New India Assurance Co. Ltd. in respect of vehicles under hire-purchase agreements with only Telco Bureau of Hire-purchase Credits. In this connection it is also suggested that GIC should issue necessary directive to all the four subsidiary insurance companies to follow a uniform system of charging premium on the same basis as is being charged by the New India from Telco.

(iv) The direct advances by banks against vehicles are guaranteed by the Guarantee Corporation for which a small commission is charged by the Corporation. A major portion of bad debts incurred by banks in such transactions is made good by the Corporation.

It is suggested that the scope of the Guarantee Corporation be extended to hire-purchase transactions and the bad and irrecoverable dues from the hirers may be guaranteed by the Corporation charging a small guarantee commission. Alternatively, the General Insurance Corporation of India should introduce Hire-purchase (Dues Recovery) policies to cover the risk of hire-purchase companies in respect of dues from the hirers.

It is further suggested that the indemnity guarantee policies issued by the insurance company in favour of lending banks should further cover the risk of the hire-purchase companies in respect of recoveries from their hirers charging a small additional premium assessed on actual claims disbursement. Telco enjoys this facility of hirer's risk coverage under an arrangement with its insurance company. The Hire-purchase (Dues Recovery) policies as well as the extended indemnity guarantee policies should be freely offered to hire-purchase companies by the General Insurance Corporation of India.
4. Seizure of vehicle

(a) On default by hirer: In presidency towns, the courts have authority to appoint a Receiver in case of default by the debtor. It is suggested that this remedy should be extended to other towns, preferably at district level, to ensure speedy action and eliminate chase of the vehicle by the aggrieved owner and consequent use of force and resistance by the hirer.

In spite of the legal and contractual right vested in the hire-purchase company, as owner, to take possession of the vehicle by seizure, in practice it is not at all a smooth operation but generates heat and bitter resistance. It is suggested that a police authority be vested with the power and responsibility to assist the owner in taking possession of the vehicle from the hirer on being satisfied about the default committed by the hirer as provided in the agreement entitling the owner to exercise his right to repossess the vehicle.

(b) Seizure disallowed: While a hire-purchase financier is justified in taking possession of the vehicle in case of default by the hirer, there is no justification for seizure of the vehicle for arrears other than hire instalments, such as, late payment surcharge and expenses incurred for recovery of dues, etc. It is suggested that the law should prohibit repossession of the vehicle for the recovery of any dues other than hire instalments. These are money suits which should be got decreed through a law court.

(c) Under confiscatory laws: Section 452 of the Criminal Procedure Code provides that the property used in the perpetuation of an offence may be confiscated. Likewise, other central and state legislations have confiscatory provisions. These confiscatory statutes were formulated much before hire-purchase attained recognition by insertion of Sec. 31A in the Motor Vehicles Act in 1969 providing for
mention of hire-purchase interest in the registration certificate.

As suggested in some High Court judgements, when a vehicle is caught in perpetration of an offence under any law, the authorities should ascertain from the Registration Certificate whether the vehicle is under a hire-purchase agreement. If it be so, the concerned RTO and the hire-purchase financier be informed of the seizure of the vehicle and the vehicle be released in favour of the financier. A permanent solution, however, would be that all confiscatory laws be amended to exclude confiscation of vehicles covered by hire-purchase agreements as well as a hire-purchase legislation specifically providing for the non-confiscatory status of the vehicle though seized under any confiscatory law.

5. Accounting

(a) Accounting of profit: There are various methods for accounting of profit on hire-purchase contracts, such as, even-spread method, rule of 78 method also called sum-of-digits method, actuarial method, direct or arbitrary percentage method besides some other methods. Under rule of 78 method, greater profit is taken in the initial period creating tax liability earlier than under other methods and the actuarial method is complicated. These two methods are rarely adopted.

Out of the three prevalent methods, the first method accounts for only those cases which are finalised in an accounting year and the current cases are carried forward. The second method is that profit is recognised immediately an instalment falls due, whether it is received or not. The third method is based on realisation, that is, the profit is recognised on those amounts actually received. Under the first method, profit and hence taxation is postponed till the date when the case is finalised. Even if
the slab of income changes in the intervening years, but the change is minor. Under the second method, profit is recognised when an instalment falls due even though it may not be received and the hire-purchase company has to pay tax on a profit which has not been received. The third method based on actual realisation appears to be most sound.

It is suggested that the method of profit reckoning on realisation basis should be acceptable for income-tax assessment and the income tax law should enforce a uniformity in profit reckoning by all hire-purchase companies.

(b) Flat rate of hire charge: Small local financiers and hire-purchase departments of vehicle manufacturers charge a flat rate of hire charge of about 14 per cent per annum as against as high a rate as 20 per cent charged by some hire-purchase financiers for new vehicles and 25 per cent for old vehicles. This very wide disparity in the flat rate of hire charge by various hire-purchase financiers is undesirable for the business as a whole.

The suggestion is that there should be a prescribed ceiling fixed for the flat rate of hire to be charged from hirers. The flat rate chargeable by hire-purchase financiers should be linked with bank's lending rate of interest prescribing a ceiling for new vehicles and a reasonably higher ceiling for old vehicles making due allowance for expenses and profit.

(c) Depreciation: The anomaly that depreciation of the vehicle under the Income Tax Act is not allowable to the hirer, though he is the user but not the owner, and it cannot be granted to the owner, though he is the owner but not the actual user, is tried to be resolved by administrative instructions issued by the Central Board of Revenue. These instructions have been questioned in the High Courts and there are decisions at variance with each other. Whether depreciation is to be allowed to the hirer or not depends on the view of the ITO. Some committees appointed by
government suggested amendment to the Income Tax Act while the Economic Administration Reforms Commission suggested that the law be amended to authorise the Board to frame necessary rules and the actual mode of allowing depreciation under hire-purchase and like arrangements may be left to be spelt out in the rules.

The Motor Vehicles Act 1939 recognised hire-purchase by an amendment to the Act in 1968. It is suggested that the Income Tax Act should also be amended to recognise hire-purchase and allow depreciation to the hirer as the actual user. For the purpose of depreciation under the Income Tax Act, the hirer, who is the eventual purchaser, should be recognised as the 'owner' so long as he continues to be the hirer.

6. Motor Vehicles Act

(i) After taking repossession of the vehicle for default on the part of the hirer, the hire-purchase company has to remove the vehicle from the place of seizure for garaging. The hire-purchase company should be entitled to a Trade Certificate provided for dealer in Sec. 2(4) or provision may be made in Sec. 62 for a temporary permit to meet such a situation.

(ii) The definition of 'owner' in Sec. 2(19) be so amended as to leave no ambiguity between the two ownerships, namely, absolute ownership of the hire-purchase company and the restricted ownership of the hirer as operator of the vehicle.

(iii) The Registering Authority should obtain and affix at the time of registration under Sec. 24, the signature of the registered owner in the RC book itself. This precaution would eliminate the possibility of an unscrupulous person to impersonate as the registered owner while approaching the hire-purchase company for finance.
(iv) The Registering Authority should obtain a no-objection-certificate from the concerned hire-purchase company before issuance of a new registration mark under sec. 29(2A).

(v) Change of address entered in the Registration Certificate under sec. 30 should immediately be notified to the concerned hire-purchase company.

(vi) There should be uniformity in practice and procedure in noting and cancellation of hire-purchase endorsement under Sec. 31A. At present the practice and procedure differs from state to state.

(vii) Acceptance by RTO of goods tax, road tax, passenger tax, etc. in respect of a vehicle under hire-purchase should be subject to production of a no-dues cum no-objection certificate from the concerned hire-purchase company.

(viii) Any alteration in the vehicle under hire-purchase should have prior approval of the concerned financier before action is taken under sec. 32. The vehicle serves as a security and an alteration may reduce its value.

(ix) In respect of a vehicle under hire-purchase, suspension of registration under sec. 33, cancellation of registration under sec. 34 or surrender of a permit by a permit-holder or its non-validation by authorities under sec. 61 and 68 should immediately be notified to the concerned hire-purchase company and there should be a uniform practice in all states.

(x) Motor Vehicle Rules framed by State Governments include issue of duplicate Registration Certificate where the original was lost, destroyed or mutilated. In order to check misuse of duplicate RCs, a no-objection certificate from the financier should be made obligatory.

(xi) In respect of a vehicle under hire-purchase, replacement of a vehicle covered by a permit or transfer of
permit from one person to another should be permitted under sec. 59 only on production of a no-objection letter from the concerned financier.

(xii) Chapter VIII regarding insurance should specifically provide that the liability to pay compensation to third party rests entirely on the registered owner (RC-holder) and the insurer and not on the financier.

7. Leasing

Sec. 31A of the Motor Vehicles Act recognises the hirer as 'owner' and the vehicle is allowed to be registered in his name adding in the Registration Certificate interest of the financier in the vehicle. In the absence of recognition of leasing under the Motor Vehicles Act, vehicles are not allowed to be registered in the name of the lessee. Notices and summons for any breach or offence under the Motor Vehicles Act are therefore issued to the lessor who is not concerned with the operation of the vehicle under lease.

It is suggested that sec. 31A be made applicable to lease transactions so that the lessee, who is the actual user of the vehicle, becomes the 'owner' for the limited purpose of the Motor Vehicles Act and the vehicle is registered in the name of the lessee adding in the Registration Certificate the interest of the lessor in the vehicle.

8. Miscellaneous

(a) National Transport Commission: A National Transport Commission be formed to survey all aspects of the existing road transport system and the role of hire-purchase in the financing of motor vehicles. This Commission should recommend measures to improve the hire-purchase system so as to enable it to render better service to hirers and promote
sale of commercial vehicles. The Commission should not be a mere advisory body but its recommendations should be adopted and implemented as quickly as possible.

(b) **Code of Conduct**: The Federation of Indian Hire Purchase Associations (FIHPA) should seek government approval through the Reserve Bank of India by issuing directions to all commercial banks to consider applications of hire-purchase companies only if the applicant is a member of FIHPA through its regional association. In case of breach of the Code of Conduct by any member, his membership should come to an end and his case should not be recommended to the bank for any bank facility.

The Researcher's stress is on a standard Code of Conduct to be observed by members because such a Code of Conduct is not only helpful for the entire field of business but also in many allied activities related with hire-purchase. If a standard Code of Conduct is established, all parties concerned with hire-purchase will be immensely benefited.

(c) **Settlement of disputes**: It is in the interest of all concerned that the disputes between parties to a hire-purchase contract are settled amicably and expeditiously without the necessity to go to law courts. The best forum for settlement of disputes would be a conciliation body formed by nominating one or two representatives of the local associations to which the disputants belong.

It is suggested that local associations of operators (hirers) and hire-purchase financiers should nominate their representatives in equal number to form a standing conciliation body to hear both sides to the dispute and give their award which should be binding on the parties to the dispute. The representatives so nominated should be rotated every two years. In case of difference between the members of the conciliation body, the matter should be referred to the presidents of the local associations whose decision should
be final and binding. Such conciliation of disputes outside law courts would save heavy costs of litigation for both the parties and expedite settlement of disputes.

(d) MRTP restrictions: MRTP restrictions apply if a manufacturer of commercial vehicles floats a hire-purchase company as a subsidiary with the sole object of promoting sales.

It is suggested that provisions of MRTP should be relaxed for vehicle manufacturers floating a subsidiary specifically for financing of vehicles manufactured by them. The hirers would obtain finance from such companies at comparatively low rate, almost on no-profit no-loss basis.

9. Enactment of Commercial Hire Purchase Act:

At present hire-purchase cases are governed by the Indian Contract Act 1872 and the case law because there is no separate Act for hire-purchase. In 1972, the Hire Purchase Act was enacted but it was not enforced. Even if it is enforced, it will be suitable only for consumer type of hire-purchase under which goods are acquired for personal, family or household purposes and not for hire-purchase of commercial type under which goods like motor vehicles are acquired for productive purposes.

The Personal Property Security Act, drafted by the Banking Laws Committee in 1977, is a complete departure from the Hire Purchase Act 1972 as it draws its inspiration from the Uniform Commercial Code, Art. 9 of USA. Adoption of a legislation on the pattern of the Uniform Commercial Code, however desirable, would entail complete break away from the present traditional and deep-rooted law structure.

After a thorough and intensive study of various aspects of hire-purchase, the Researcher feels that there should be a separate Act exclusively for commercial hire-purchase, particularly for motor vehicles, and it is therefore suggested that such Act should be suitably drafted.
taking in view the hire-purchase transactions of commercial vehicles. The Researcher has drafted a Commercial Hire Purchase Act for this purpose which is given in Annexure XI. If this draft Act is enacted and enforced, it will not only regulate effectively hire-purchase transactions of commercial nature, but will give least cause for disputes and will solve the problems faced by all parties to hire-purchase contracts. Such a comprehensive legislation would ensure healthy growth of hire-purchase in the proper direction.

If the above suggestions are implemented, the hire-purchase agencies will play effective role in the transport industry and will assist in the purchase of commercial vehicles.