

LAW RELATED TO BANKERS AND CUSTOMERS RELATION IN INDIA

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ABSTRACT

The structure of Banking varies widely from the country to country. Often a country's banking structure is a consequence of the regulatory regime to which it is subjected. The banking system in India works under the constraints that go with the social control of public ownership .

Nationalization, for instance, was a structural change in a functioning of commercial banks which was considered essential to better serve the needs for the development of the economy in conformation with the national policy and objectives. Similarly to meet the major objectives of banking sector reforms government stake was reduced up to 51% in the public sector banks. New private sector banks were allowed and foreign banks were permitted additional branches .

KEYWORDS: BANKING, NATIONALISATION, STRUCTURE.

INTRODUCTION

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Nationalization, for instance, was a structural change in a functioning of commercial banks which was considered essential to better serve the needs for the development of the economy in conformation with the national policy and objectives. Similarly to meet the major objectives of banking sector reforms government stake was reduced up to 51% in the public sector banks. New private sector banks were allowed and foreign banks were permitted additional branches .

Depending on the activities, products and services provided by the banks to its customers or availed by the customer, the relationship between the Banker and Customer emerges. There exists a transactional relation between them, we must understand the term banker and customer. According

to Banking Regulation Act, 1949, Section 5(b) banking is defined as ‘accepting for the purpose of lending or investment of deposits of money received from the public of repayable on demand and withdrawable by cheque, draft or order or otherwise .¹

Thus the term banker is not defined by the Banking Regulation Act but it defines the term “Banking”. This definition highlights two points. The primary function of a banker is accepting of deposits for the purpose of lending or investing the same .

In latest business global banks and the banking machine each appears to be spine of the society. Without banking, commercial enterprise cannot survive. The records of ‘Banking’ could be very antique and the offerings and sort of relation it offers relies upon at the very commercial enterprise of financial institution cash that is the using issue or pressure at the back of all of the enterprises .

In latest global banks are constantly visible or regarded because the intermediaries which swimming pools the financial savings of an man or woman and channelized them for numerous efficient business purposes. But opposite to this myth banks now no longer handiest offers in cash however additionally create cash for e.g. credit score cash like ‘cheques ’, ‘credit score card ’etc .

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

Banking in India has come a protracted manner, it isn't always recent, it has a thunder years of lengthy records whilst it involves its lifestyles in addition to improvement. O.W.Homes whilst requested approximately the Indian Banking System in the early times, he stated “placed now no longer agree with in cash however cash in agree with”.²

People there understood that you may want to financial institution on Indian financial institution. During the duration of hundred years banking has modified lots in appreciate of its function, law and administrations. The primary motives at the back of it may be stated to the general mankind

¹ Jyotsna Sethi and Nishwan Bhatia, Elements of Banking and Insurance,(Published by PHI Learning Pvt. Ltd. Delhi)4.Reserve Bank of India.

² ICSI, Banking And Insurance Law And Practice, Published by Taxman.

withinside the century and the very rapid improvement of the era withinside the beyond few decades. Besides the each motives the general improvement of the commercialisation introduced with the clean to be had technological centers has accelerated the consumer's want and expectancies in banking .

In Ancient India there has been no greater of currencies withinside the primitive societies, the handiest machine later whilst the civilisation of India superior and those confronted problems withinside the barter machine, the concept of inscriptions on leaves cam into the thoughts and turned into used because the currency, among the events and additionally as promise to pay a few offerings. This concept of inscriptions is popular even these days now no longer handiest in India however additionally throughout the globe i.e. Paper transaction. It is the maximum not unusualplace mode of each commercial enterprise and mode of offerings in bodily paper currency. It assure up a bearer to positive quantity referred to at the paper with the aid of using the sovereign or king throughout the globe .

Bank completely relies upon on its clients for its improvement and growth in there Banking Business. Due to this ever developing marketplace of banking banks should preserve up with its pace .

Thus turning into a purpose to construct a string relation among the banker and consumer. The dating among them is more often than not of the debtor and a creditor however it additionally acts an agent and a trustee every now and then the banker acts as a debtor .

On beginning of an account the banker assumes tie function of a debtor, the cash exceeded mover to the banker turns into a debt due from him to the consumer, a debtor stays a creditor of his financial institution so long as his account contains a credit score balance, however the regulations of financial institution make him an unsecured creditor of the Banker .

Since the creation of deposit coverage in India in 1962, the detail of threat to the depositors has been minimized because it insured the deposits as much as a special quantity. This dating reverses

whilst the consumer's account is overdrawn. Bankers end up borrowers whilst consumer has taken mortgage from the banker and is still so till the mortgage is repaid .³

The advances granted with the aid of using the bankers are typically secured with the aid of using the tangible property making the banker a secured creditor to his consumer, however withinside the instances of financial institution, the connection differs from every other debtor or creditor due to the fact the creditor should call for price, at right vicinity and time, in a right manner .

BANKER AS TRUSTEE

Ordinarily a banker is a debtor of his consumer in appreciate of the deposits made with the aid of using the latter, however in positive instances he acts as a trustee additionally. A trustee holds cash or property and plays positive capabilities for gain of a few different known as the beneficiary .

The function of a banker as a trustee or as a debtor is decided in step with the instances of every case. If he does in regular path of his commercial enterprise with none particular path shape his consumer, he acts as a debtor or creditor. In case of cash, invoice etc., deposits with financial institution for particular reason, the banker's function might be decided with the aid of using ascertaining whether the quantity turned into definitely debited or credited to the consumer's quantity or now no longer .

On the alternative hand, if a consumer instructs his financial institution to buy positive securities out of his deposit with the latter, however he financial institution fails earlier than making such buy, the financial institution will remain a debtor of his consumer (and now no longer a trustee) in appreciate of the quantity which turned into now no longer withdrawn from or debited to his account to perform his particular. The dating among the banker and his consumer as a trustee and beneficiary relies upon upon the reason of use of the cash or files entrusted to the banker .⁴

BANKER AS AN AGENT

³ M L Tannan, Banking Law And Practice in India 23rd Edition , Published by Lexis Nexis, Nagpur.

⁴ M L Tannan, Banking Law And Practice in India 23rd Edition , Published by Lexis Nexis, Nagpur.

A banker acts as an agent of its consumer and carry out no. of organization capabilities for the ease of his consumer e.g. to shop for or promote securities on behalf of its clients, acquire cheques on his behalf and make price on numerous dues of his clients .

The variety of such organization capabilities have end up a great deal wider and the banks at the moment are rendering a big no. Of organization offerings of various nature e.g. a few banks have mounted Tax Service Department to take in the tax issues in their clients. A financial institution is typically notion of as a dependable organization with which cash is deposited. The concept is trying in precision banks do acquire valuables for the secure custody and adopt to go back them, however that us handiest a subsidiary function .

Usually it's far jewellery, deeds, securities and easy articles, that are given to the financial institution as secure custody deposits. But the offerings rendered with the aid of using the financial institution both as depository or as a trustee are just a few of the many offerings, a number of them of a greater essential nature, a cutting-edge banks, because it is basically with the aid of using manner of deposit that a financial institution prepares the idea for numerous different activities .

The cash energy of a financial institution, with the aid of using which it enables in large part the commercial enterprise community, relies upon significantly upon the quantities it may borrow the manner of deposits which can be withinside the shape of constant, saving or modern deposits .

All those pass closer to augmenting its resources. The cash obtained at the constant deposits may be used with none threat of withdrawal earlier than the due date, and withinside the case of financial savings deposits, a financial institution can use a completely big a part of them, as usually the needs of the consumer having such deposits are relatively small, resulting from limit located as to the quantity being withdrawn and no. Of withdrawals to be made inside a week .⁵

⁵ M L Tannan, Banking Law And Practice in India 21st Edition , Published by Lexis Nexis, Nagpur.

By beginning of modern accounts, a banker now no longer handiest obtains price range however additionally offers its customers with deposit currency, that is bath greater handy of greater low in cost than different shape of currency. By taking cash on deposits a financial institution provides safe keeping, for people's money .

But the money, is not set apart I'm a strong room, it is replaced by a debt due, from a banker, who ordinarily pays interest so long as the money is retained by him as the deposit .

The principle together with the interest is returned on it's being claimed in accordance with the term of the contract. Relation between banker and customer is consensual depending on express or implied contract between two .

Thereby a contractual relation springs between banker and customer. In case of banking where a person asks the banker to open an account for him and the bankers acceptance thereof, constitutes implied contract of relationship. The main banking function was and is to keep in custody other people money and lending a part of it .

Gradually, these functions were extended, and new other were added. As a result the dependence of commerce upon banking has become so great that in modern money economy, the cessation, even for a day or two, of the bankers activity, would completely paralyse, the economic life of a nation .

It will be proper to say that banking system has assumed the blood vessel of the economy of the country. Now-a-days the banker have to deal with a large of maters. Relation of banker and customer depends upon the service given by the banker. In addition to his primary functions, a banker renders a number of services to his customer. The relationship between them primarily is that of a creditor and debtor .

A banker also act as an agent or trustee of his customer if the latter entrusts the former with agency or trust work. In such cases, the banker act as a debtor, an agent and a trustee simultaneously but in relation to the specified business .⁶

Relationship of pledger and pledgee

When a customer pledges an article (goods and documents) with the banker as a security for the payment of debt or performance of the promise, the customer becomes a pledger and the banker becomes the pledgee .

Relationship of bailor and a bailee

Section 148 of the Indian Contract Act, 1872 defines Bailment, bailor and bailee. A “Bailment” is the transfer of goods from one person to another for some purpose, upon a contract that they shall return the goods after completion of the purpose or will dispose of the goods according to the direction agreed as per the terms and conditions of the contract .

The person delivering the good is called the bailor and the person to whom the good is delivered is called the bailee. Banks secure their advances by taking some tangible assets as securities. Sometimes they keep valuable items, or land and other things as security. By doing so, the bank becomes the baillie and the consumer becomes the bailor .⁷

Relationship of lesser and lesse

Section 105 of Transfer of Property Act, 1882 defines lease, lessor, lesse, premium and rent. A lease of immovable property is transferred to the right to enjoy the property for a certain period of time. The transferor is the lessor. The transferee is called the lessee".

⁶ M L Tannan, Banking Law And Practice in India 21st Edition , Published by Lexis Nexis, Nagpur.

⁷ R. N. Choudhary, Banking, Laws, central Law Publications, Allahabad.

Relationship of trustee and beneficiary

When a bank receives money or other valuable securities, then the banker's position is of a trustee. On the other hand, when a bank receives money and uses it in various sectors, the bank becomes the beneficiary .

Relevant laws

Consumer Protection Act, 2019

The Consumer Protection Act, 2019 is applied with the goal to stable and guard the hobby of the consumers. It offers redressal to the grievances of consumers, who aren't glad through the provider of the provider. Under this act phase 2(1)(o) of the act defines the "provider". Section 2(1)(g) of the Act offers the definition of the term "offerings". Banking offerings additionally come below the scope of the provider supplied below the Consumer Protection Act, 1986. Deficiency in any form of offerings may be added to the purchaser boards for redressal of grievances. Section 2(1)(d) of the Act says that a purchaser is someone who avails offerings for the consideration .⁸

Limitation Act, 1963

The Limitation Act, 1963 offers for the prescribed term inside which any suit, attraction or software may be made. The "prescribed length" method the length of problem computed according with the provisions of the Limitation Act. A banker is permitted to report a suit, attraction or an software for recuperation of the mortgage most effective whilst the report is in the length of problem. Therefore, the financial institution ought to be cautious that every one the criminal mortgage files are in the time restriction and are held as valid .

⁸ Vinod Kothari, Banking Law and Practice In India, 26 edition (Publication by Lexis Nexis).

Revival of the report

Acknowledgement Debt

As in keeping with Section 18 of the Limitation Act, acknowledgement of the debt in writing through the borrower at the considered necessary stamp paper earlier than the expiration of expiration length can expand the problem length .

Part Payment

When the element reimbursement is made through the borrower himself or through his accredited agent earlier than the expiry of the report, proof of such charge needs to be taken in writing and duly signed through the borrower .

Fresh set of Documents

When the sparkling set of files are obtained through the financial institution earlier than the expiry of the authentic report, then the sparkling length of problem starts. The revival of the time-barred debt is ruled below Section 25(3) of the Indian Contract Act, 1872 .

Recovery of money owed because of banks and economic Institutions Act, 1993 (DRT Act) This Act got here into operation on twenty fourth June, 1993. Recovery of dues of the mortgage of the banks and economic group via courtroom docket have become tough. There turned into a large backlog of cases. To conquer this trouble and expedite the technique of mortgage recuperation, this rules turned into enacted .⁹

Important matters withinside the rules

⁹ Jyotsna Sethi and Nishwan Bhatia, Elements of Banking and Insurance,(Published by PHI Learning Pvt. Ltd. Delhi). Reserve Bank of India

This Act constituted the “Debt Recovery Tribunal” for the rapid recuperation of the loans. This Act is relevant for the debt because of any financial institution or any economic group or any consortium of them, for the recuperation of the debt above 10 lakhs .

The term “Debt” cover the subsequent varieties of money owed: Any legal responsibility which include hobby, whether or not secured or unsecured. Any legal responsibility payable below a decree or order of any Civil Court or any form of the arbitration award .

Any legal responsibility payable below the loan or subsisting upon or legally enforceable and recoverable at the date of the software .

Lok Adalat Act

Lok Adalats are organised below the Legal Services Authorities Act, 1987. They are supposed for the agreement of a dispute or ability dispute out of the courts. Lok Adalat derives through the consent of the events or whilst the courtroom docket is glad that the dispute may be settled through the Lok Adalat. They should determine the problem primarily based totally at the precept of equity, justice and desirable conscience. In case of a agreement, the award will be binding on each the events. No attraction ought to lie in any courtroom docket in opposition to the award .¹⁰

SARFAESI Act, 2002

This Act empowers the financial institution and different economic establishments to get better their dues in Non Performing Assets, with out the intervention of the courtroom docket. It additionally empowers the financial institution to problem a observe to the defaulting debtors or guarantors to discharge their dues inside 60 days .

Important components of the Act

Securitization

¹⁰ M L Tanna, Banking Law And Practice in India 23rd Edition , Published by Lexis Nexis, Nagpur.

Securitization is the technique wherein the economic asset is offered through the securitization or reconstruction business enterprise from the lender (financial institution or economic group). The Securitization or reconstruction business enterprise increases the fund through the certified and institutional shoppers through issuing safety receipt to them. The safety receipt represents an undivided hobby withinside the economic asset .

Asset Reconstruction

Asset reconstruction position is to take over the loans or advances from the financial institution of the economic belongings for the cause of the recuperation. On acquisition of the economic asset, the asset reconstruction business enterprise will become the proprietor of the assets. The asset reconstruction business enterprise steps withinside the footwear of the financial institution. The securitization business enterprise is ruled through the Companies Act, 1956. The regulatory authority for all of the securitization business enterprise is the Reserve Bank of India .

Enforcement of Security Interest

The enforcement of safety hobby is essential for the recuperation of the financial institution's mortgage. The enforcement of the safety function is achieved with none interference from the courtroom docket. The financial institution has to serve the attention to the borrower earlier than 60 days with a request to discharge the legal responsibility of the mortgage. If the borrower fails to pay the quantity in the stipulated time then the secured creditor can take the ownership of the secured asset .

Security Interest

Any right, identify or hobby of any form of assets created in favour of the secured creditor is referred to as the safety hobby. Whenever any lender takes any assets from any borrower then a lender receives safety in that assets. When the financial institution or any lender is taking ownership of the assets then precaution need to be taken and additionally, if required, the assist of the metropolitan Justice of the Peace or leader judicial Justice of the Peace may be taken .¹¹

¹¹ R. N. Choudhary, Banking, Laws, central Law Publications, Allahabad.

Lender legal responsibility Act

After the advice with the aid of using the committee constituted with the aid of using the authorities of India for restricted legal responsibility laws, the Lender Liability Act got here into force. It has devised positive honest exercise code for the creditors which become followed with the aid of using all of the banks .

The act explicitly laid down the standards with the aid of using which the creditors ought to comply for granting loans. The creditors have to take away any mortgage utility inside an inexpensive time period. It need to recall the welfare of the borrower. If the utility is from any borrower who belongs to the pivotal quarter of the economy, then he need to be dealt on a concern basis. The creditworthiness have to be checked in keeping with guidelines and law supplied with the aid of using the Reserve Bank of India. The margin and safety stipulation have to now no longer be used because the due diligence together with different phrases and situations for granting the mortgage .

Banking Ombudsman

Banking Ombudsman Scheme is a criticism redressal system. If a patron is disillusioned with the carrier of the financial institution then he can method the banking ombudsman for in addition action. It is added beneathneath Section 35A of the Banking Regulations Act, 1949 .¹²

Important functions of the Banking Ombudsman Scheme

- Deficiency in carrier, non-attractiveness of notice of notes of small denominations with out enough cause .
- Delayed or non-price of inward remittance or behind schedule issuance of the draft .
- Non-adherence to prescribed operating hours .
- Refusal to open a banking account with none legitimate reason .
- Levying of costs with none previous be aware to the patron .
- Forced closure of deposit account with out be aware or enough reason .

¹² Vinod Kothari, Banking Law and Practice In India, 26 edition (Publication by Lexis Nexis).

- Refusal to shut or put off last accounts .
- Non-adherence to the honest manner followed with the aid of using the financial institution or non-adherence to the honest manner and characteristic for clients laid down with the aid of using the Banking Codes and Standard Board of India .
- Non-observance of Reserve Bank hints on engagement of recuperation dealers with the aid of using banks .
- Non-observance of the Reserve Bank hints on hobby rates.

Case laws

In the case of Motigavri vs. Naranjidwarkadas, the Bombay High Court held that the connection among banker and banker is that of a lender and borrower .

In the case of Canara Bank vs. Canara Sale Corporation and others, a much broader method become considered and it become held that a courting among the patron of a financial institution and a patron is that of a debtor and creditor .

In the case of Surender S/O Laxman Nikose vs. Chief Manager and approved officer, State financial institution of India, it become held with the aid of using the Bombay excessive courtroom docket that when the connection among the banker and patron ends, it waives off each proper along with the proper of lien .

Secrecy is required in the matter of banker customer relationship. Account details of the customer cannot be disclosed to a third party. Nobody can seek through a writ petition an enquiry into commercial transactions between the banker and customer. In the case of Kattabomman Transport Corporation Ltd. V. State Bank of India¹³, it was that this is the duty of the banker towards the customer about the secrecrecy of the account. Such duty is the legal one duty which arises out of the contract made between them and not merely a moral one .

¹³ Kattabomman Transport Corporation Ltd. V. State Bank of India, AIR 1992 Ker 351.

Conclusion

With the advancement of the internet and different online mechanisms, the world has become a global village. People keep their savings and valuables in banks for better returns. At times we have seen that people have seen instances of online fraud .

The regulation should be made in ensuring complete protection and also should satisfy the consumer. The arbitrary action of granting loans to people with brand value should be curbed and the account must be fixed if anyone is found responsible for the inaction or impropriety .

The rising non-performing assets have become a concern for everyone in the country. It directly or indirectly affects common people of the country. So, we should understand the need of the hour and make regulations in that direction .

Customer relationship with the banker that is debtor and creditor. Bankers also act as an agent or trustee of his customer if the latter entrusts the former with agencies or trust work¹⁴ .

The outcome of this article shows that banks can assess the dimensions of services and to decide which dimension needs improvement. Hence, efforts of the banks should not only be to equalize the “customers” expectations with what the bank offer but efforts have to be made in to ensure that bank employees should provide a number of services which exceeds the perceived expectation of the customers .¹⁴

¹⁴ R. N. Choudhary, Banking, Laws, central Law Publications, Allahabad.

From the above research, it reveals that about the meaning and nature of the relationship of customer and banker, from where it starts and what are the duties and obligations against each other to discharge their duty in respect of the contract they made with opening an account .

Due to the various relationships after providing the different services to the customers by the bank. They both are bound to comply the terms and conditions settled between them, if any of the party will breach on the settled terms then it arises the problem of the termination of relation either by the customer or by the banker .¹⁵

It is suggested to that after breach by any of the party both the party vcan avail a legal remedy against each other by filling the complaint in the Consumer Protection Act, Banking Ombudsman scheme , Debt Recovery Tribunal, SARFAESI, Bankrupt and Insolvency Act. So in the last it's a duty cast upon both of them to do their job in that manner which will not detrimental/ prejudice to the right of other one .

¹⁵ ICSI, Banking And Insurance Law And Practice, Published by Taxman.

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