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**Banking law and Practice**

Over the last two centuries, the Indian banking system has seen various modifications. Businessmen known as Sharoffs, Seths, Sahukars, Mahajans, Chettis, and others have run an indigenous banking system from ancient times. They performed the standard functions of lending money to merchants and craftsmen, as well as putting money in the hands of monarchs to fund wars. However, local bankers were unable to develop a system for collecting public deposits, which is now a key function of a bank, to any major extent. Modern banking in India originated in the latter half of the 18th century.

The General Bank of India and the Bank of Hindustan, both formed in 1786, were the first banks. Following that, the Bank of Bengal (formed in 1806 as the Bank of Calcutta and renamed the Bank of Bengal in 1809), the Bank of Bombay, and the Bank of Madras were established as presidential banks. For many years, the Presidency banks acted as quasi-central banks. In 1925, the three banks merged to establish the Imperial Bank of India.

The Union Bank was established in Calcutta in 1839 by Indian traders, but it failed in 1848 due to the 1848-49 economic crisis. The Bank of Upper India was established in 1863 but declared insolvent in 1913. The Allahabad Bank is India's oldest surviving joint stock bank, having been established in 1865. The Oudh Commercial Bank in Faizabad, which was formed in 1881, fell bankrupt in 1958. Following that was the Punjab National Bank, which was created in Lahore in 1895 and is now one of India's largest banks.

### **MEANING OF BANKING**

Banking includes a wide variety of financial institutions that store the money of individuals, businesses and other entities. Banks provide financial services that help people save, manage and invest their money. DEFINITION - BANKING "Banking is the business of accepting for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdraw-able by cheque, draft, and order or otherwise." Indian Banking Regulation Act, 1949. The term "bank" can refer to many different types of financial institutions — including bank and trust companies, savings and loan associations, credit unions or any other type of institution that accepts deposits.

### **BANKER AND CUSTOMER RELATIONSHIP General Relationship Debtor and creditor relationship:**

When the banker accepts deposits from the customer then the bank becomes the debtor and the customer is the creditor. If a customer takes loans from a bank, then the customer becomes a debtor and the banks becomes a creditor. Pledger and Pledgee relationship: when customer pledges (promises) certain assets or security with the bank in order to get a loan. In this case, the customer

becomes the Pledger, and the bank becomes the Pledgee. Under this agreement, the assets or security will remain with the bank until a customer repays the loan. Licensor (Lessor) and Licensee (Lessee) relationship: The relationship between banker and customer can be that of a Licensor and Licensee. This happens when the banker gives a sale deposit locker to the customer. So, the banker will become the Licensor, and the customer will become the Licensee. Relationship of Trustee and Beneficiary: - A trustee holds property for the beneficiary, and the profit earned from this property belongs to the beneficiary. If the customer deposits securities or valuables with the banker for safe custody, the banker becomes a trustee of his customer. The customer is the beneficiary so the ownership remains with the customer.

### **Relationship of Bailor and Bailee:**

The relationship between banker and customer can be that of Bailor and Bailee. A bailment is a contract for delivering goods by one party to another to be held in trust for a specific period and returned when the purpose is ended. Bailor is the party that delivers property to another. Bailee is the party to whom the property is delivered. So, when a customer gives a sealed box to the bank for safekeeping, the customer became the bailor, and the bank became the bailee. Relationship of Advisor and Client: - When a customer invests in securities, the banker acts as an advisor. The advice can be given officially or unofficially. While giving advice the banker has to take maximum care and caution. Here, the banker is an Advisor, and the customer is a Client. Relationship of Agent and Principal: - The banker acts as an agent of the customer (principal) by providing the following agency services: Buying and selling securities on his behalf, Collection of cheques, dividends, bills or promissory notes on his behalf. Special Relationships Statutory Obligation to honour cheques: When a customer opens an account there arises a contractual relationship between the banker and the customer. As long as there is sufficient balance in the account of the customer, the banker must honour all his cheques. However, the banker can refuse to honour the cheques only in certain cases like wrong details. Secrecy of customer's account: When a customer opens an account in a bank, the banker must not give information about the customer's account to others. It is one of the principal duties of the banker. There are certain circumstances in which the banker is entitled to or required to make disclosures about a customer's account. RIGHTS OF A BANKER Right to charge interest Every bank in India has the right to charge interest on the loans and advances sanctioned to customers. Interest is usually charged monthly, quarterly, semi-annually or annually. Right to levy commission and service charges Along with interest, banks also have the right to levy a commission and service charges for the services rendered. The service rendered by the bank might be SMS notification service, retail banking and so on. Banks can also debit these charges from the customer's bank account. Right of Lien Another important right enjoyed by banks is the Right of Lien. Banks have the right to keep goods and securities belonging to the debtor as a security, until the loan is repaid by the debtor. Banks have only the right to maintain the security of the debtor and not to sell. The Right of Set-off The banker has the right to set off customer accounts. Banks can merge a couple of accounts which are in the name of the customer and set off the debit balance in one account with the credit balance in the other, provided the funds belong to the customer.

## **Legal Framework Governing the Banking Industry**

The main legislation that governs banking firms in India is the Banking Regulation Act, 1949. This Act was first passed but it was changed in 1965 to include cooperative banks and again in 2020 to place cooperative banks under the supervision of RBI. Other laws, such as the National Bank for Financing Infrastructure and Development statute of 2021, have altered the statute. A number of banking-related topics are governed under the Banking Regulation Act, 1949, including lending, cash reserves, and assets. Let's take a closer look at the banking industry's legal system. •

### **Reserve Bank of India Act, 1934**

The RBI Act was accepted to set up the RBI with the goals of controlling the issuance of bank notes, maintaining reserves to guarantee monetary system stability, and efficiently running the country's credit and currency systems. The RBI's authority, duties, and composition are primarily covered under the Act. With the exception of Section 42 that deals with cash reserve ratio regulation and Section 18 that mostly discusses immediate discounting of bills of exchange and promissory notes, the act does not address the regulation of the banking sector.

Hence, the RBI Act deals with

The RBI's incorporation, capital, management, and operations.

The RBI performs a number of duties, including as issuing bank notes, managing money supply, acting as a banker to banks and the federal, state, and local governments, and serving as a lender of last resort.

Clauses concerning accounting, audits, reserve money, and credit funds.

Giving instructions and applying sanctions when Act provisions are broken.

### **Banking Regulation Act, 1949**

It is regarded as one of the most important legal systems pertaining to banking. The Banking Regulation Act, 1949 (often known as "The BR Act") replaced the previous 1949 Banking Companies Act. The BR Act gives banks numerous guidelines in addition to the RBI Act. They address many different topics; among the main ones are:

Section 5(i)(b) explains banking as the taking of funds of public deposits with the intention of investing or lending. Such deposits may be repaid immediately upon request or may be withdrawn in other ways, such as by check, draft, order, or another method;

Any business that manages the banking industry is considered a banking company under Section 5(i)(c);

Section 5(i)(f) makes a distinction between time and demand liabilities, defining time debts as those that are not demand obligations and liabilities that are repayable on demand;

Secured loans and advances are defined under Section 5(i) (h). A secured loan or advance is one in which the amount of the loan or advance is never less than the market value of the collateral used as security. Conversely, advances or loans without collateral are known as unsecured loans;

Section 6(1) classify what constitutes a banking business, and

Banks operating in India are required by Section 7 to use the phrases "banking company," "banking," or "work bank" in their titles.

### **Foreign Exchange Management Act, 1999**

The Foreign Exchange Management Act of 1999 governs the management and regulation of foreign exchange. Its goal is to reform regulations pertaining to foreign exchange to advance the growth of foreign exchange markets and promotes an increase in international payments and trade. India as a whole is covered under the Act. On June 1, 2000, it became operative. The act has a number of provisions, including Sections 3, 4, 7(1), and 11.

### **Lok Adalats under Legal Services Authority Act**

Lok Adalats are established in accordance with the Legal Services Authorities Act, 1987, in order to create a nationwide dispute resolution procedure. In essence, Lok Adalats obtain jurisdiction through consent or when the court determines that Lok Adalats may be a suitable forum for resolving disputes. Along with a number of other legal precepts, it is guided by the concepts of equity, justice, and moral conscience. In the event of a settlement, the parties to the dispute would be bound by the award. There isn't a court appeal available for the award. Lok Adalats are currently arranged when a dispute is worth less than twenty lakhs.

### **Limitation Act, 1963**

Limitation Act, 1963 is said to one of the important laws pertaining to lending. This specific Act grants the lending bank the authority to sue the lender should he fail to make loan installments.

A limited amount of time is allotted under the Limitation Act, 1963 ("LI Act") to submit an appeal, lawsuit, or any other application. It generally indicates that there is a LI Act-compliant statute of limitations. A banker may only pursue legal action by submitting a specific lawsuit, appeal, application and requesting any form of recovery if all supporting documentation is submitted within the allotted timeframe. The banker would be left with no option except of legal action to regain any outstanding debts if the documents have expired or have passed the statute of limitations.

As a result, the lending lender needs to review the loan documentation very carefully. He ought to adhere to some sort of procedure to ensure that every document he has is legitimate and has not expired. Generally, it is the lending party's obligation to maintain all legal documents executed, valid, and within the applicable statute of limitations as specified by the LI Act.

These rules ensure that the banking industry is strong and resilient in a changing economic climate by defending both the rights of consumers and the interests of financial institutions. Comprehending these legal statutes is imperative for proficient banking administration and

adherence, underscoring the significance of a strictly regulated financial infrastructure in bolstering the comprehensive expansion and advancement of the Indian economy.

### **Reserve Bank of India Act, 1934**

The Reserve Bank of India Act, 1934 was adopted with the goal of establishing the Reserve Bank of India.

- (a) The issue of bank notes is regulated.
- (b) to preserve reserves in order to keep the monetary system stable
- (c) to keep the country's currency and credit system running smoothly

The RBI Act covers:

- (i) the constitution
- (ii) powers
- (iii) functions of the Reserve Bank of India.

The act does not directly deal with banking system regulation, with the exception of a few sections dealing with bank CRR maintenance and direct discount of bills of exchange and promissory notes as part of rediscounting facilities to manage credit to the banking system.

### **Banking Regulation Act, 1949**

The Banking Regulation Act, 1949 is one of the important legal frameworks. Initially the Act was passed as Banking Companies Act, 1949 and it was changed to Banking Regulation Act 1949. Along with the Reserve Bank of India Act 1935, the Banking Regulation Act 1949 gives banks a slew of rules in a variety of sectors. Some of the important provisions of the Banking Regulation Act 1949 are listed below.

According to Sec 5(i) (b), banking is defined as the acceptance of money deposits from the general public for the purpose of lending and/or investment. Such deposits can be repaid on demand or in other ways, and they can be withdrawn by check, draught, order, or other means.

A banking firm is defined in Section 5(i)(c) as any company that conducts banking activity.

Any company that does banking business is defined as a banking company under Section 5(i)(c).

Secured loans or advances are defined under Section 5(i)(h). A secured loan or advance secured by the security of an asset whose market worth is not less than the amount of the loan or advances at any time. Unsecured loans, on the other hand, are defined as a loan or advance that is not secured.

The definition of banking business is dealt with in Section 6(1).

Sec 7 mandates that banking businesses conducting business in India use at least one of the words bank, banking, or banking company in their name.

The Banking Regulation Act restricts or prohibits certain bank activity through a number of clauses.

### **LIMITATION ACT, 1963 Limitation Act – Important Aspects**

The Limitation Act of 1963 establishes a time limit within which any suit appeal or application must be filed. The ‘prescribed period’ refers to the period of limitation determined in accordance with the Limitation Act’s provisions. Only when the documents are inside the statute of limitations is a banker entitled to pursue legal action by filing a suit, preferring an appeal, and applying for recovery. If, on the other hand, the documents have expired or have become time barred, the banker will be unable to pursue legal action to recover the debt.

As a result, banks must ensure that all legal loan documentation in their possession are current and legitimate. To put it another way, lenders are responsible for ensuring that all loan documents are correctly executed and that they are all within the required limitation period as set forth in the limitation act. This is one of the most important aspects of bank credit management.

### **BANKERS’ BOOK EVIDENCE ACT, 1891**

- (a) Except for the state of Jammu and Kashmir, the Act covers all of India.
- (b) ‘Bank’ and ‘banker’ means
  - (i) any organisation or entity that engages in banking
  - (ii) any partnership or individual whose books are subject to the provisions of this Act
  - (iii) any money order or savings bank in a post office
- (c) All books used in the ordinary work of a bank, such as ledgers, day books, cash books, and other records, are referred to as “bankers’ books.” The records can be kept in any format, including manual records, printed computer printouts, written records, microfilm, magnetic tape, or any other mechanical or electronic data. Such records can be kept on-site or off-site, including at a backup or disaster recovery facility.
- (d) The term ‘court’ refers to the person or persons in front of whom a judicial proceeding is held, and the term ‘judge’ refers to a High Court judge.
- (e) Different sorts of inquiry proceedings and investigations are referred to as legal proceedings. The term “legal procedures” refers to the process of
  - (i) any investigation or action in which evidence is or may be given
  - (ii) an arbitration
  - (iii) any investigation or inquiry undertaken by a police officer under the Code of Criminal Procedure, 1973, or any other applicable statute for the acquisition of evidence
- (f) an accurate and certified copy of the bank records

## **RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 (DRT ACT)**

Due to a large backlog of cases and the time involved, recovering loan dues from borrowers through the courts has been a big challenge for banks and financial institutions. The Act went into effect on June 24, 1993.

Important highlights of DRT Act 1993:

This Act established special “Debt Recovery Tribunals” to accelerate debt recovery.

This Act governs the collection of debts owed to any bank or financial institution, or a group of them, in excess of ten lakhs rupees.

Except for the state of Jammu and Kashmir, this Act applies to the entire country of India.

The term “debt” refers to the following sorts of bank and financial institution debts:

- (a) any liability, whether secured or unsecured, that includes interest
- (b) any liability incurred as a result of a decree or order of a Civil Court, or as a result of an arbitration award, or otherwise
- (c) any obligation owed under a mortgage that is owed on the date of application and is legally recoverable

Genesis of private property, family and the state  
Seen inventions, experience and skill led to production of not only necessary product but also social surplus product with more inventions, more experience, skill and knowledge especially in the areas of: domestication of animals: agriculture: irrigation it was found that more and more could be produced not only by the community but also by individuals in the community. When man the individual found that he could produce not only for his immediate needs but also a surplus product [i.e. not only an individual necessary product but also an individual surplus product] he became assured that he could survive without depending on the other members of the community. His surplus could be exchanged for products he did not produce. This assurance of survival outside the communal link made man develop acquisitiveness and greed. man began to claim for himself and his immediate relatives the wealth/the property he had acquired with his own hands – his property:

**Conclusion** The Legislation of Limitation is an important banking law that requires the lending banker to be careful in initiating legal action against the borrower if the loan defaults. According to the requirements of the Bankers’ Book Evidence Act, 1891, banks can present a certified copy

of the extracts of original documents, records of the bank as evidence when a claim of the bank is necessary to be proven in a court of law. As a business unit (entity), the bank must adhere to a variety of tax laws. Banks must pay corporate tax at the same rates as other businesses. Apart from that, if banks use the services of professionals, contractors, or other third parties, they must deduct and pay relevant tax at source (TDS) and other special taxes as required by the Income Tax Act of 1961. From the above discussion, we can conclude that the development of banking in India from its historical origins to the present day is a reflection of the substantial changes that have occurred to financial institutions and activities over time. For banking operations to run smoothly and with stability and transparency, the legal framework that governs this industry is essential. Important statutes that cover vital topics such banking operations, foreign exchange, debt recovery, and legal recourse are the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, and others.

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