

# Banker and customer relationship under banking regulation act, 1949: A study

**Anchal Raturi \* & Dr. Anil Dixit\*\***

\*BBA LLB 10th Sem, law college, Dehradun, Uttaranchal university, Dehradun, uttarakhand.

\*\*Associate Professor, Dr. Anil Dixit, law college, Dehradun, Uttaranchal university, Dehradun , uttarakhand.

Received: February 17, 2019

Accepted: March 21, 2019

**ABSTRACT:** *This article is a purpose of research only. 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. 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.' 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*

**Key Words:** *Banking, customer, nationalization, social control, structure, investment.*

## INTRODUCTION

In today's commercial world banks and the banking system both seems to be backbone of the society. Without banking, business can not survive. The history of 'Banking' is very old and the services and kind of relation it provides depends on the very business of bank money which is the driving factor or force behind all the enterprises<sup>1</sup>

In today's world banks are always seen or viewed as the intermediaries which pools the savings of an individual and channelized them for various productive commercial purposes. But contrary to this myth banks not only deals in money but also create money for e.g. credit money like 'cheques', 'credit card' etc.

## RELATIONSHIP BETWEEN BANKER AND CUSTOMER

Banking in India has come a long way, it is not recent, it has a two thousand years of long history when it comes to its existence as well as development. O.W.Homes when asked about the Indian Banking System in the early times, he stated "put not trust in money but money in trust". People there understood that you could bank on Indian bank. During the period of two hundred years banking has changed a lot in respect of its function, regulation and administrations. The major reasons behind it can be said to the overall mankind in the century and the very fast development of the technology in the past few decades. Besides the both reasons the overall development of the commercialisation added with the easy available technological facilities has increased the customer's need and expectations in banking.<sup>2</sup>

In Ancient India there was no more of currencies in the primitive societies, the only system later when the civilisation of India advanced and people faced difficulties in the barter system, the idea of inscriptions on leaves came into the mind and was used as the currency, between the parties and also as promise to pay some services. This idea of inscriptions is prevalent even today not only in India but also across the globe i.e. Paper transaction. It is the most common mode of every business and mode of services in physical paper

<sup>1</sup>Tannan's Banking Law and Practice in India, vol. I, 2003

<sup>2</sup>P.N. Varshney, "Banking Law & Practice", (2003), p.1, 12<sup>th</sup>Edn. Sultan Chand & Co. New Delhi

currency. It guarantee up a bearer to certain amount mentioned on the paper by the sovereign or king across the globe.

### **RELATIONSHIP AS DEBTORS AND CREDITORS**

Bank solely depends on its customers for its development and expansion in there Banking Business. Due to this ever growing market of banking banks have to keep up with its pace. Thus becoming a reason to build a string relation between the banker and customer. The relationship between them is primarily of the debtor and a creditor but it also acts an agent and a trustee sometimes the banker acts as a debtor.<sup>3</sup>

On opening of an account the banker assumes tie position of a debtor, the money handed mover to the banker becomes a debt due from him to the customer, a debtor remains a creditor of his bank as long as his account carries a credit balance, but the policies of bank make him an unsecured creditor of the Banker.

Since the introduction of deposit insurance in India in 1962, the element of risk to the depositors has been minimized as it insured the deposits up to a specified amount.

This relationship reverses when the customer's account is overdrawn. Bankers become debtors when customer has taken loan from the banker and continues to be so until the loan is repaid. The advances granted by the bankers are usually secured by the tangible assets making the banker a secured creditor to his customer, but in the cases of bank, the relationship differs from any other debtor or creditor because the creditor must demand payment, at proper place and time, in a proper manner<sup>4</sup>

### **BANKER AS TRUSTEE**

Ordinarily a banker is a debtor of his customer in respect of the deposits made by the latter, but in certain circumstances he acts as a trustee also. A trustee holds money or assets and performs certain functions for benefit of some other called the beneficiary . The position of a banker as a trustee or as a debtor is determined according to the circumstances of each case. If he does in ordinary course of his business without any specific direction form his customer, he acts as a debtor or creditor. In case of money, bill etc., deposits with bank for specific purpose, the banker's position will be determined by ascertaining whether the amount was totally debited or credited to the customer's amount or not.

On the other hand, if a customer instructs his bank to purchase certain securities out of his deposit with the latter, but he bank fails before making such purchase, the bank will continue to be a debtor of his customer (and not a trustee) in respect of the amount which was not withdrawn from or debited to his account to carry out his specific. The relationship between the banker and his customer as a trustee and beneficiary depends upon the purpose of use of the money or documents entrusted to the banker.

### **BANKER AS AN AGENT**

A banker acts as an agent of its customer and perform no. of agency functions for the convenience of his customer e.g. to buy or sell securities on behalf of its customers, collect cheques on his behalf and make payment on various dues of his customers. The range of such agency functions have become much wider and the banks are now rendering a large no. Of agency services of diverse nature e.g. some banks have established Tax Service Department to take up the tax problems of their customers. A bank is usually thought of as a reliable agency with which money is deposited. The idea is wanting in precision banks do receive valuables for the safe custody and undertake to return them, but that us only a subsidiary function. Usually it is jewellery, deeds, securities and simple articles, which are given to the bank as safe custody deposits. But the services rendered by the bank either as depository or as a trustee are only a few of the many services, some of them of a more important nature, a modern banks, as it is largely by means of deposit that a bank prepares the basis for several other activities. The money power of a bank, by which it helps largely the business community, depends considerably upon the amounts it can borrow the way of deposits which may be in the form of fixed, saving or current deposits. All these go towards augmenting its resources. The money received on the fixed deposits can be used without any risk of withdrawal before the due date, and in the case of savings deposits, a bank can use a very large part of them, as generally the demands of the customer having such deposits are comparatively small, on account of restriction placed as to the amount being withdrawn and no. Of withdrawals to be made within a week. By opening of current accounts, a banker not only obtains funds but also provides its clients with deposit currency, which is bath more convenient of more economical than other form of currency. By taking money on deposits a bank

<sup>3</sup> T.N. Chhabra, "*Banking Theory and Practice*", (2003), p.379, Dhanpat Rai and Sons, Delhi

<sup>4</sup>Supra n. 6

provides safe keeping, for people's money. But the money, is not set apart in 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.<sup>5</sup>

## FUNCTIONS

Issuing of notes is the function, which was once considered to be the most paying part of the banker's business, is in modern times performed generally by the central banking institution in most of the leading countries of the world. It's important to banks in general has dwindled in some of the important countries in which the cheque currency has replaced bank notes to a large extent <sup>6</sup>

Lending money is one of the functions which is not only very important but it is also the main source of profit to the most of the banks. When a bank agrees to discount a bill, or gives funds in exchange for promissory notes, the transaction is known either as a discount or a loan. In either case, the bank agrees to place funds at a promise of payment at the future date. This enables those persons and corporations who find their own capital insufficient for carrying on business on a large scale, to do so with the help of the funds borrowed from the bank, and thus use their capital more profitably than they could otherwise do. A bank therefore, is able to help in turn, may use funds not only to their advantage, but also, to the advantage of the community.

Transferring money from place to place modern banks are generally in a position to remit money, for one place or country to another, by means of draft drawn upon their branches or agents. They can also, by purchasing Bill's of exchange, enable merchants and other to receive money from their debtor, in other cities or countries, these facilities have helped not only the internal trade of different countries, but also the international commerce. It will be evident that that the great strides which have been made by trade and commerce, which in turn have been to a large, extent responsible for the great industrial development of the different parts of the world. Would have been impossibility but for the facilities of exchange provided by the banks. Banks also provides miscellaneous services that includes:-<sup>7</sup>

The issue of various form of credits e.g. letter of credits, travellers cheques, credit cards of circular notes; under writing of capital issues, the acceptance of Bill's of exchange; whereby the bank lends its name to his customers in return for the banker commission. The safe custody of valuables acting as executor and trustee for customers, preparing income tax returns for their customers; and furnishing guaranteed on behalf of customers etc. <sup>8</sup>

## MISCELLANEOUS FUNCTIONS AND SERVICES

In addition to the main functions of the commercial banks stated above, the modern banks perform several miscellaneous, subsidiary, special and Para-Banking services such as:

- (1) Issue of various credits, e.g., letters of credit, travellers cheques, credit cards and circular notes; (2) under-writing of capital issues; (3) acceptance of Bill's of exchange, whereby banker lends his name to his customers in return for a commission; (4) factoring; (5) safe custody of valuables; (6) acting as executor's and trustee for customers; (7) preparing income-tax return for their customers; (8) furnishing guarantees on behalf of customers; (9) mutual funds, insurance and bank assurance; and (10) a host of other miscellaneous, subsidiary, special and para-banking services.

## SUBSIDIARY, SPECIAL and PARA-BANKING SERVICES by BANKS

These services may be classified broadly into:

- (a) Agency services
- (b) Miscellaneous or General Utility Services

## MISCELLANEOUS OR GENERAL UTILITY SERVICES

Miscellaneous utility services rendered by the modern commercial banks in performance which the banker's position is not that of an agent for his customer are :

1. Receiving of deeds, securities and other valuables for safe custody <sup>9</sup>
2. Safe deposits vaults, safety lockers or bank lockers

<sup>5</sup>Singhvi I.M : bank nationalisation

<sup>6</sup>Supra nn. 5,18 , p. 5

<sup>7</sup>M.L.Tannan's "*Banking law and Practice in India*", (2005), p. 9, 21 Edn., Vol. I, Wadhwa & Co. Nagpur

<sup>8</sup>Ibid

<sup>9</sup> Gae R S : the bank nationalisation case of constitution , 1971

3. Issuing of letters of credits and letters of indication
4. Circular notes; emergency vouchers, etc;
5. Collection of interests on securities/debentures
6. Collection of dividend on shares, pension Bill's
7. Credit transfer; National Electronic fund transfer
8. Dealing in foreign exchange; foreign exchange business by banks
9. Off shore banking services for non residential customers
10. Providing specialised advisory services to customers
11. Hire-purchase, lease financing, equipment leasing and factoring
12. Primary dealerships business
13. Mutual Fund business
14. Money market mutual funds
15. Entry of banks into insurance business; bank assurance
16. Pension fund management
17. Underwriting of loans raised by government
18. Underwriting of loans raised by public bodies and trading corporation
19. Personal tax assistance, preparing income - tax/sale- tax/VAT- Wealth tax returns, collection and payment of taxes

### **CONCLUSION**

This article focuses on 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 work. 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.<sup>10</sup>

---

<sup>10</sup>Tannan's Banking Law and Practice in India, vol. I, 2003