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BANKING AND ITS RELATION BETWEEN THEIR CUSTOMERS

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Introduction

The relationship between banker and customer is a legal relationship that starts after the formation of a contract. When a person opens a bank account in the bank and the banker gives his acceptance for the account, it binds the banker and customer in the contractual relationship. The person who holds a bank account in the bank and uses its services is called a bank customer. The contractual relationship between bank and customer creates more types of banker and customer relationships. The bank and customer are two different terms that are related to the bank. The person doing the banking business is called a banker and the person who is connected with the bank, either depositing his money or taking a loan from the bank is called a bank customer. The relationship between banker and customer can be of various types because it totally depends upon the activities, products and services provided by the banker to the customer. Although the relationship is totally based on contract, trust is an important part of the relationship between bankers and customers¹.

Section 5 (b) of the Banking Regulations Act 1949 defines the bank as a financial institution. According to the section "The bank accepts, lending money or invest the money from the public repayable on demand or otherwise and withdraw through online, cheques, drafts or any other way." It is a licensed institution to receive deposits of its customer and make the loan. The main work of the bank is depositing and lending money. The bank encourages people to save their money into the bank accounts to earn some interest on the money. The bank uses this money to give loans to needy people with an interest rate. In simple words, the bank works as the

¹ <https://www.lawteacher.net/free-law-essays/commercial-law/general-legal-relationship-between-bank-and-customer-commercial-law-essay.php#:~:text=The%20general%20legal%20relationship%20between,a%20debtor%20of%20the%20customer.>

intermediary between two people where one wants to save his money and others need money. This process also helps the bank to gain some profit and make the relationship between banker and customer. This process creates different rights and duties of bankers against the customer and rights and duties of customers against the bank which make the banker and customer relationship stronger.

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Relationship Between Banker And Customer

The banker and customer relationship are based on trust. This relationship is divided into two important parts to understand clearly: The general relationship between banker and customer The special relationship between banker and customer The General Relationship Between Banker And Customer The services provided by a banker to its customer comes under a general relationship between banker and customer. The general relationships between banker and customer are: Relationship As Debtor And Creditor The opening of a bank account in the bank of a banker by the person who has the capacity to contract is the basis of the debtor and creditor relationship between banker and customer. By filling the form for opening a bank account bind the banker and customer in the written contract. The customer when deposits his money into his bank account, becomes a creditor because he is giving his money to the bank indirectly².

This relationship gets opposite at the time when a bank customer takes the loan from the bank, the bank becomes the creditor and the customer becomes a debtor. It means the debtor and creditor relationship works both ways depending on the condition of the transfer of money. The bank usually takes the money of customers to use it to provide loans for other bank customers and it is the most important activity of a bank.

Relationship As Trustee And Beneficiary

The bank performs the relationship as a trustee with his customer when the bank customer deposited his property or other assets. In this case, the bank holds the property of other documents of bank customers in exchange for the loan provided by the bank. The person who is depositing the property or other documents is known as the beneficiary.

It can be done in two conditions:

When a person deposited his important document in the bank locker.

The person took the loan and deposited his property document as security.

This relationship is based on trust. The document deposited in the bank is a secured document and the bank never share these documents with any other person. Also, the ownership of the property will remain with the person, not the bank. In the situation of bank liquidation, the property secured in the bank by the beneficiary is not subject to distribution to the general

² chrome-

extension://efaidnbmnnnibpcajpcgiclfndmkaj/https://www.bdu.ac.in/cde/SLM/B.Com.%20Bank%20Management/ Banking%20Theory%20Law%20&%20Practice/lesson%201%20relationship.pdf

creditors of the bank³.

Relationship As Principal And Agent

The bankers provide agent services to their customers. The agent is defined under section 182 of the Indian contract act as the agent is the person who is employed by a person by giving him the power of attorney to work or deal on his behalf. The banker pay taxes, electricity bills, insurance premium etc. at the command of the bank customer who acts as principal. The bank usually charges for these services provided by the bank to its customer. In the banking industry, the relationship between a banker and a customer can be considered as a principal-agent relationship. In this type of relationship, the customer (the principal) entrusts the bank or the banker (the agent) with their money and other financial assets, and the bank or the banker acts on the customer's behalf to manage and invest those assets.

Limitation Act, 1963

[The Limitation Act, 1963](#) provides for the prescribed time period within which any suit, appeal or application can be made. The "prescribed period" means the period of limitation computed in accordance with the provisions of the Limitation Act. A banker is allowed to file a suit, appeal, or an application for recovery of the loan only when the document is within the period of limitation. Therefore, the bank should be careful that all the legal loan documents are within the time limit and are held as valid⁴.

Revival of the document

- Acknowledgement Debt

As per [Section 18](#) of the Limitation Act, acknowledgement of the debt in writing by the borrower on the requisite stamp paper before the expiration of expiration period can extend the limitation period.

- Part Payment

When the part repayment is made by the borrower himself or by his authorised agent before the expiry of the document, evidence of such payment has to be taken in writing and duly signed by the borrower.

³ <https://bankopedia.co.in/2023/10/11/banker-customer-relationship-comprehensive-guide/>

⁴ <https://blog.ipleaders.in/relationship-between-banker-customer>

- Fresh set of Documents

When the fresh set of documents are received by the bank before the expiry of the original document, then the fresh period of limitation starts. The revival of the time-barred debt is governed under [Section 25\(3\)](#) of the Indian Contract Act, 1872.

Recovery of debts due to banks and financial Institutions Act, 1993 (DRT Act)

This [Act](#) came into operation on 24th June, 1993. Recovery of dues of the loan of the banks and financial institution through court became tough. There was a huge backlog of cases. To overcome this problem and speed up loan recovery, this legislation was enacted.

Important things in the legislation

- This Act constituted the “Debt Recovery Tribunal” for the speedy recovery of the loans.
- This Act is applicable for the debt due to any bank or any financial institution or any consortium of them, for the recovery of the debt above 10 lakhs.
- The term “Debt” cover the following types of debts:
 1. Any liability inclusive of interest, whether secured or unsecured.
 2. Any liability payable under a decree or order of any Civil Court or any kind of the arbitration award.
 3. Any liability payable under the mortgage or subsisting upon or legally enforceable and recoverable on the date of the application.

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Lok Adalat Act

[Lok Adalat's](#) are organised under the [Legal Services Authorities Act, 1987](#). They are intended for the settlement of a dispute or potential dispute out of the courts. Lok Adalat derives by the consent of the parties or when the court is satisfied that the dispute can be settled by the Lok Adalat. They must decide the matter based on the principle of equity, justice and good conscience. In case of a settlement, the award shall be binding on both the parties. No appeal should lie in any court against the award.

SARFAESI Act, 2002

This [Act](#) empowers the bank and other financial institutions to recover their dues in Non-Performing Assets, without the intervention of the court. It also empowers the bank to issue a notice to the defaulting borrowers or guarantors to discharge their dues within 60 days.

Securitization

Securitization is the process in which the financial asset is bought by the securitization or reconstruction company from the lender (bank or financial institution). The Securitization or reconstruction company raises the fund by the qualified and institutional buyers by issuing security receipt to them. The security receipt represents an undivided interest in the financial asset.

Asset Reconstruction

Asset reconstruction role is to take over the loans or advances from the bank of the financial assets for the purpose of the recovery. On acquisition of the financial asset, the asset reconstruction company becomes the owner of the property. The asset reconstruction company steps in the shoes of the bank. The securitization company is governed by the [Companies Act, 1956](#). The regulatory authority for all the securitization company is the Reserve Bank of India.

Enforcement of Security Interest

The enforcement of security interest is important for the recovery of the bank's loan. The enforcement of the security feature is accomplished without any interference from the court. The bank has to serve the notice to the borrower before 60 days with a request to discharge the liability of the loan. If the borrower fails to pay the amount within the stipulated time then the secured creditor can take the possession of the secured asset⁵.

Security Interest

Any right, title or interest of any kind of property created in favour of the secured creditor is called the security interest. Whenever any lender takes any property from any borrower then a lender gets security in that property. When the bank or any lender is taking possession of the property then precaution must be taken and, if required, the help of the metropolitan magistrate or chief judicial magistrate can be taken.

Lender liability Act

After the recommendation by the committee constituted by the government of India for limited liability laws, the [Lender Liability Act](#) came into force. It has devised certain fair practice code for the lenders which was adopted by all the banks.

The act explicitly laid down the criteria by which the lenders must comply for granting loans. The lenders should dispose of any loan application within a reasonable time. It must consider the welfare of the borrower. If the application is from any borrower who belongs to the pivotal sector of the economy, then he must be dealt on a priority basis. The creditworthiness should be checked according to rules and regulation provided by the Reserve Bank of India. The margin and security stipulation should not be used as the due diligence along with other terms and conditions for granting the loan⁶.

Banking Ombudsman

[Banking Ombudsman Scheme](#) is a grievance redressal system. If a customer is dissatisfied with the service of the bank, then he can approach the banking ombudsman for further action. It is

⁵ <http://lawtimesjournal.in/customer-banker-relationship/>

⁶ <https://www.lawteacher.net/free-law-essays/commercial-law/general-legal-relationship-between-bank-and-customer-commercial-law-essay.php>

introduced under [Section 35A of the Banking Regulations Act, 1949](#).

Important features of the Banking Ombudsman Scheme

- Deficiency in service, non-acceptance of note of notes of small denominations without sufficient cause.
- Delayed or non-payment of inward remittance or delayed issuance of the draft.
- Non-adherence to prescribed working hours.
- Refusal to open a banking account without any valid reason.
- Levying of charges without any prior notice to the customer.
- Forced closure of deposit account without notice or sufficient reason.
- Refusal to close or delay closing accounts.
- Non-adherence to the fair procedure adopted by the bank or non-adherence to the fair procedure and function for customers laid down by the Banking Codes and Standard Board of India.
- Non-observance of Reserve Bank guidelines on engagement of recovery agents by banks.
- Non-observance of the Reserve Bank guidelines on interest rates.

Case laws

In the case of [Motigavri vs. Naranjdwarkadas](#), the Bombay High Court held that the relationship between banker and banker is that of a lender and borrower.

In the case of [Canara Bank vs. Canara Sale Corporation and others](#), a wider approach was taken into consideration and it was held that a relationship between the customer of a bank and a customer is that of a debtor and creditor.

In the case of [Surender S/O Laxman Nikos vs. Chief Manager and authorised officer, State bank of India](#), it was held by the Bombay high court that once the relationship between the banker and customer ends, it waives off every right including the right of lien.

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.

