



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **PROTECTION OF BANKERS**

AUTHORED BY: NARAYAN DNYANOBA SASTE

ROLL No.:01

CLASS: LLM-II

ACADEMIC YEAR: 2023-24

## **1.1 Introduction :**

Consumers are those who with due consideration of money use a service of any goods and services provided by the manufacturer or service provider. Similarly, the moment a person opens an account with the banker, he becomes the bank's client or a Customer.

There are different types of relationship bank is having with his customer like bailor and bailee, debtor-creditor and for these relationship, They are thus bound by certain duties and obligations towards each other. Banker-customer relationships are contractual, based on an express or implied arrangement between the two. Bankers has given the protection under Banking Law.

## **1.2 Definition of Banking :**

The Indian Banking Regulation Act defines the business of banking by stating the essential functions of a banker. It also states the various other businesses a banking company may be engaged in and prohibits certain business to be performed by it.

As per section 5(b) of Banking Regulation Act, 1949, the term banking is characterized as the acceptance of deposits of money from the public, repayable on demand or otherwise, for the purpose of lending or investment, and withdrawals by cheque, draft, order or otherwise.

Section 5(c) of the Banking Regulation Act, 1949 defines "Banking Company" as any company that carries out the banking business in India.

As per Section 5(d) of the Banking Regulation Act, 1949 Company means any company as defined in Section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of Section 591 of that Act.

The RBI defines a modern bank as “An establishment for the custody of money received from, or on behalf of, its customer. Its essential duty is to pay their drafts on it, its profit arise from the use of the money left unemployment by them. Banks organize the borrowing and lending work (credit) of the community, they lend their funds (capital) and borrowed funds and their own credit to person engaged in trade, agriculture, manufacturing and other industries. They supply a part of the medium of exchange in the form of bank notes, cheques.”

### **1.3 Who is a customer?**

“A customer is someone who has an account with a banker or who is regularly committed to behaving as such with the banker.

One may conclude that a “Customer” is one who has either a current or a saving account or, in the absence of it, some relation with the bank in the ordinary course of business, that can be seen as banking business.

### **2.1 Paying Banker:**

While modern banking has many aspects and the range of activities of clearing banks today is very broad, the payment and processing of cheques are still a central and fundamental feature.

Paying banker refers to the banker who holds the cheques of the drawer and is obliged to make payment if the funds of the customer are sufficient to cover the amount of his cheque drawn.

The paying banker is the banker who cancels the signature of the drawer on payment of the cheque either by the usual means of authorizing a drawer’s signature or by any method that the bank takes, which also reflects the point of payment. In some cases, cheques are paid by stamping the cheques “Paid”, usually with the date being included in the stamped crossing, or by perforating the payment date onto the cheque.

As paying banker, the banker is obligated to accept the customer’s cheque, if it is valid and if it is issued by the holder in its original form within a reasonable period of time and before the banker has provided orders to stop paying or receiving notice of the death of the customer, etc., and if sufficient funds are available to the customer’s account and that balance is available to the banker.

## **2.2 Collecting banker:**

One who undertakes to collect cheques, drafts, bill, pay order, traveller cheque, letter of credit, dividend, debenture interest, etc., on behalf of the customer is known as a Collecting banker.

A banker is not legally obligated to receive cheques from the client, but now the collection of checks has become a main feature of a banker with a widening banking procedure and a broader use of crossed checks, which are invariably only obtained by a banker.

A banker receives cheques from his client and behaves

1. as a holder for value, or
2. as his agent,

## **2.3 Paying and Collecting Banker: Difference**

1. The main difference between the collecting and paying banker is a person who holds the cheque and is obliged to make the payment on behalf of the customer. The collecting banker is the one who undertakes the collection of the drafts, bills, pay orders, transfer cheques, etc., on behalf of the customer.
2. The paying banker gets protection under the Negotiable Instrument Act section 85, and the collecting banker gets protection under section 131.

If a banker plays both roles at the same time, then the banker can be called a collecting banker but not liable as a paying banker.

## **3.0 The Protection of Paying Banker:**

The payment process and conditions and the protection and responsibilities of the paying banker.

A customer is a person who buys services or goods from manufacturers or service providers with due consideration of money. Thus, as a customer opens an account, he becomes the client of the banker. The banker provides different services to the customer by following the specific duties and obligations he has. This develops a relationship between the customer and the banker as payment and processing of cheques is the fundamental feature of the modern banking system.

### 3.1 Protection of Paying Banker:

- *Section 10*

The paying banker can claim protection under the Negotiable Instruments Act; the condition the banker has got to satisfy is that the payment is in due course.

‘Payment in due course’ means payment following the apparent tenor of the instrument in straightness and without negligence to someone in possession thereof under circumstances which doesn’t afford an inexpensive ground for believing that he is not entitled to receive payment of the quantity therein mentioned.

- *Section 85*

This acts as the statutory protection of the paying banker.

- *Section 85(1)*

In the case of an order cheque, this section implies that the payment must be in due course; otherwise, the banker will be deprived of statutory protection, and the banker must confirm the endorsements are regular.

- *Section 85(2)*

This is the protection in the case of bearer cheque; this section implies that even if any endorsements restrict further negotiation, the cheque will retain the bearer character if it is originally issued as a bearer cheque.

#### Section 128

This is the protection in case of a crossed cheque. This section implies that the banker has made the payment in due course with good faith and without negligence, as per section 10. The banker can cross the payment following the requirement (section 126), that is, any banker through the general crossing and specified banker in case of special crossing.

### 3.2 The Legal Obligations of Paying Banker

The obligatory role of the paying banker while honouring cheques is-

- **Crossed cheque and open cheque-** If a cheque is crossed, the banker must check whether it is generally crossed or special crossed. In general crossing, the owner needs to bring the cheque to the banker, and during the special crossing, the banker will pay for the bank.

In an open cheque, the cash will be paid by the banker across the counter.

1. **Proper form-** A banker should check whether the cheque is in the proper form.
2. **Cheque presentation and date of cheque-** The cheque should consist of the correct format and location. The banker must also check for the correct cheque date; it should not be a post-dated or stale-dated cheque.
3. **Words and figures-** The sum of the amount needed must be written correctly, and if it varies, the banker needs to deny the cheque.
4. **Alterations and overwriting-** The banker should take care of extra modifications or changes made on the cheque.
5. **Endorsements-** The bearer cheque is not legally endorsed; thus, while making payment, the banker should check all endorsements on the cheque.

## 4 Leading case laws on payment of cheques by a bank :

### 4.1 Canara Bank vs Canara Sales Corporation and Others [(1987) 2 Supreme Court Cases 666]

In this case, the Supreme Court ruled that the bank is not allowed to pay when the customer signs the check. Since such a banker has no right to debit the account of the customer on such falsified cheque. Since the customer-bank link is between the borrower and the debtor, a cheque that has a forged signature has no authority on the bank to pay.

### 4.2 Bank of Bihar vs Mahabir Lal (AIR 1964 Supreme Court 397)

In this case, the Supreme Court held that only where payment was made to the holder or to his agent, i.e. in due course, a banker would claim cover under Section 85. Payment to an individual without a business or to a bank's agent is not a payment to a corporation

## 5 Leading case laws on duties of collecting banks :

### 5.1 Ladbroke vs Todd (1914)

In this scenario, a thief stole a transit cheque and obtained it from a banker where, without reference, he opened an account and presented himself as the payee whose signature the thief forged. The thief withdrew the sum after the cheque was obtained. The bank was kept responsible for making the sum good because it behaved negligently when opening the account to the degree that it did not receive any reference.

### **5.2 Harding vs London Joint Stock Bank [1914]**

In this particular case, after having complied with the requisite formalities, an account was opened for a new client. As is common practice, the account was not opened by depositing cash, but by paying a third-party cheque. In the situation, the bankers made inquiries with the client, who subsequently produced a forged letter provided by his employer granting him authority to deal with the cheque. The cheque was eventually found to have been stolen by the customer and transferred to his account. The bank was deemed incompetent for failing to make the employer's necessary inquiries as to whether the client who was an individual really had the requisite authority to deal with the cheque.

### **6.0 Conclusion:**

In modern banking, the aspects of the payment and processing of cheques are still the central and fundamental features. A paying banker has a responsibility for the customer's cheque if it is valid and issued by the holder in a given period. The sufficient fund is available to the customer's account, and when that balance is available to the paying banker.

The banking system is designed in such a way that it generates money through different business transactions and domestic and foreign trade. This type of banking system develops a special relationship between the banker and the customers. This relation can be formed with specific duties and obligations that a banker has.

### **References :**

1. [https://link.springer.com/chapter/10.1007%2F978-94-009-4962-1\\_5](https://link.springer.com/chapter/10.1007%2F978-94-009-4962-1_5)
2. [http://lawbaba.in/rights-obligation-banker/http://www.dispute-resolution-hamburg.com/conciliation/what-is-conciliation/.](http://lawbaba.in/rights-obligation-banker/http://www.dispute-resolution-hamburg.com/conciliation/what-is-conciliation/)
3. <http://www.eduhelpnet.com/role-of-banking-in-economic-development/>
4. [http://newhorizonindia.edu/nhc\\_kasturinagar/wp-content/uploads/2018/05/Unit-3-Banking.pdf](http://newhorizonindia.edu/nhc_kasturinagar/wp-content/uploads/2018/05/Unit-3-Banking.pdf)

5. Canara Bank vs Canara Sales Corporation and Others [(1987) 2 Supreme Court Cases 666]
6. Bank of Bihar vs Mahabir Lal (AIR 1964 Supreme Court 397)
7. Ladbroke vs Todd (1914) 30 TLR 433
8. Harding vs London Joint Stock Bank [1914]

### **2.1 Paying Banker:**

Paying banker refers to the banker who holds the cheques of the drawer and is obliged to make payment, if the funds of the customer are sufficient to cover the amount of his cheque drawn.

The paying banker is the banker who cancels the signature of the drawer on payment of the cheque either by the usual means of authorizing a drawer's signature or by any method that the bank takes, which also reflects the point of payment. In some cases, cheques are paid by stamping the cheques "Paid", usually with the date being included in the stamped crossing, or by perforating the payment date onto the cheque.

As paying banker, the banker is obligated to accept the customer's cheque, if it is valid and if it is issued by the holder in its original form within a reasonable period of time and before the banker has provided orders to stop paying or receiving notice of the death of the customer, etc., and if sufficient funds are available to the customer's account and that balance is available to the banker.

### **2.2 Collecting banker:**

One who undertakes to collect cheques, drafts, bill, pay order, traveller cheque, letter of credit, dividend, debenture interest, etc., on behalf of the customer is known as a Collecting banker.

A banker is not legally obligated to receive cheques from the client, but now the collection of checks has become a main feature of a banker with a widening banking procedure and a broader use of crossed checks, which are invariably only obtained by a banker.

A banker receives cheques from his client and behaves as a holder for value, or as his agent,

### **2.3 Paying and Collecting Banker: Difference**

The main difference between the collecting and paying banker is a person who holds the cheque and is obliged to make the payment on behalf of the customer. The collecting banker is the one who undertakes the collection of the drafts, bills, pay orders, transfer cheques, etc., on behalf of the customer.

The paying banker gets protection under the Negotiable Instrument Act section 85, and the collecting banker gets protection under section 131.

If a banker plays both roles at the same time, then the banker can be called a collecting banker but not liable as a paying banker.

### **3.0 The Protection of Paying Banker:**

The payment process and conditions and the protection and responsibilities of the paying banker.

A customer is a person who buys services or goods from manufacturers or service providers with due consideration of money. Thus, as a customer opens an account, he becomes the client of the banker. The banker provides different services to the customer by following the specific duties and obligations he has. This develops a relationship between the customer and the banker as payment and processing of cheques is the fundamental feature of the modern banking system.

#### **3.1 Protection of Paying Banker:**

##### **Section 10**

The paying banker can claim protection under the Negotiable Instruments Act; the condition the banker has got to satisfy is that the payment is in due course.

‘Payment in due course’ means payment following the apparent tenor of the instrument in straightness and without negligence to someone in possession thereof under circumstances which doesn’t afford an inexpensive ground for believing that he is not entitled to receive payment of the quantity therein mentioned.

##### **Section 85**

This acts as the statutory protection of the paying banker.

##### **Section 85(1)**

In the case of an order cheque, this section implies that the payment must be in due course; otherwise, the banker will be deprived of statutory protection, and the banker must confirm the endorsements are regular.

##### **Section 85(2)**

This is the protection in the case of bearer cheque; this section implies that even if any endorsements restrict further negotiation, the cheque will retain the bearer character if it is originally issued as a bearer cheque.

##### **Section 128**

This is the protection in case of a crossed cheque. This section implies that the banker has made the payment in due course with good faith and without negligence, as per section 10. The banker can cross the payment following the requirement (section 126), that is, any banker through the general crossing and specified banker in case of special crossing.

Leading case laws on payment of cheques by a bank :

#### **4.1 Canara Bank vs Canara Sales Corporation and Others [(1987) 2 Supreme Court Cases 666]**

In this case, the Supreme Court ruled that the bank is not allowed to pay when the customer signs the check. Since such a banker has no right to debit the account of the customer on such falsified cheque. Since the customer-bank link is between the borrower and the debtor, a cheque that has a forged signature has no authority on the bank to pay.

#### **Bank of Bihar vs Mahabir Lal (AIR 1964 Supreme Court 397)**

In this case, the Supreme Court held that only where payment was made to the holder or to his agent, i.e. in due course, a banker would claim cover under Section 85. Payment to an individual without a business or to a bank's agent is not a payment to a corporation

Leading case laws on duties of collecting banks :

#### **5.1 Ladbroke vs Todd (1914)**

In this scenario, a thief stole a transit cheque and obtained it from a banker where, without reference, he opened an account and presented himself as the payee whose signature the thief forged. The thief withdrew the sum after the cheque was obtained. The bank was kept responsible for making the sum good because it behaved negligently when opening the account to the degree that it did not receive any reference.

#### **Harding vs London Joint Stock Bank [1914]**

In this particular case, after having complied with the requisite formalities, an account was opened for a new client. As is common practice, the account was not opened by depositing cash, but by paying a third-party cheque. In the situation, the bankers made inquiries with the client, who subsequently produced a forged letter provided by his employer granting him authority to deal with the cheque. The cheque was eventually found to have been stolen by the customer and transferred to his account. The bank was deemed incompetent for failing to make the employer's necessary inquiries as to whether the client who was an individual really had the requisite authority to deal with the cheque.

#### **6.0 Conclusion:**

In modern banking, the aspects of the payment and processing of cheques are still the central and fundamental features. A paying banker has a responsibility for the customer's cheque if it is valid and issued by the holder in a given period. The sufficient fund is available to the customer's account, and when that balance is available to the paying banker.

The banking system is designed in such a way that it generates money through different business transactions and domestic and foreign trade. This type of banking system develops a special relationship between the banker and the customers. This relation can be formed with specific duties and obligations that a banker has.

