

Banking Now and Then

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Abstract

The relationship between the banker and customer arises out of the contract between them and cannot be created except by mutual consent. The relationship between a banker and his customer is basically the contractual relationship and regulated by the provisions contained in the Negotiable Instruments Act, 1881 and Indian Contract Act, 1872.

The contractual relationship which exists between the banker and customer is a complex one founded originally upon the customer and usages of bankers. This paper tries to point out the rights and liabilities that exist between a banker and customer.

This paper also points out the position of the customer as 'consumer' in the sense mentioned in the Consumer Protection Act, 1986, Researcher tries to study the rights of the customer as consumer of the bank.

Banking law is based on a contractual analysis of the relationship between the bank and the customer—defined as any entity for which the bank agrees to conduct an account. The law implies rights and obligations into this relationship.

KEYWORDS : Banking, Customer, Life line

Introduction:

Person who has a bank account in his name and for whom the banker undertakes to provide the facilities as, a banker considered to be a customer. It is not essential that the account must have been operated upon for some time. Further in **Savory & Co. v. Loyads Bank**,¹ it was held that, even a single deposit in the account will be sufficient to designate a person as customer of the banker, in the frequency of transaction is not essential. Though emphasis is not being laid on the habit of dealing with the banker in the past but such habit may be expected to be developed and continued in future. In other words, a customer is expected to have regular dealing with his banker in future.

An important consideration which determines a status as a customer is the nature of his dealing with the banker. It is evident from the business of banking. A banker performs a number of agency functions and tenders various public utility services besides performing essential functions of the banker. A person who does not deal with the banker in regard to the essential function of the banker i.e. accepting of deposit and lending of money, but avails of any of the services rendered by the banker, is not called the customer of the bank.² For example, any person without a bank account in his name may

¹ (1932) TLR 344

² Hindustan Zinc Ltd. v. Punjab National Bank., AIR 2002 Del 398

remit money through a bank draft, in cash a cheques received by him from others or deposit his valuables in the Safe Deposit Vaults in the bank or deposit cash in the bank to be credited to the account of the Life Insurance Corporation or any joint stock company issuing new shares. But he will not be called a customer of the bank as his dealings with the bank are not in regard to the essential functions of the banker. Such dealings are considered as casual dealing and are not in the nature of banking business.³

Scope of Research:

It would be essential to state that the scope for conducting research shall resolve around the relationship between Banker and Customer with respect to.....

- Origin of word the 'Bank'.
- Historical development of banking and changing dimension of banker and Customer relationship throughout time.
- Establishment of Reserve Bank of India and Nationalization of banks.
- Determination of relationship between banker and customer.
- Multidimensional relation between banker and customer.
- Various types of accounts, so customer can save their money as per their requirement. Special classes of customer and precautions to be taken while dealing with them.
- Relationship of banker-customer and banker- consumer.
- Various services provided by bank through Debit cards, Credit cards, mobile banking, internet banking, ATM etc.
- Creation of different rights and liabilities between banker and customer.
- Legal provision contained in different laws protecting the relationship and Amendments in different laws

The mentioned scope shall also be extended by making an attempt to analyze different aspect of relationship.....

- With respect to different types of customers and accounts
- With respect services rendered by banks to their customers
- With reference to frauds and deficiencies in banking transactions
- With reference to reforms made in banking sector and recent trends that are in existence in banking.

Objectives:

Banker receives money and makes a payment on behalf of the customer. This is not only one relationship which is in existence between the banker & customer and restricted between them. Banker has to play wide role to provide better services to their customer and to maintain healthy relationship between them. There is multidimensional relationship between Banker & Customer, which been studied in this Research. The relation between banker and customer is beyond the banking, which is resulted into

³ Alekha Sahoo v. Puri Urban Cooperative Bank Ltd. AIR 2004 Ori 142

multidimensional relationship. Researcher tries to study the multidimensional relationship, which is in existence between them.

Methodology: The Methodology adopted for carrying out this research is Doctrinal, Historical, and Analytical. It would be suitable research methodology in order to give constructive and position result to the impending research. For this purpose it was thought that since the research is primarily associated with “Multidimensional relationship between the Banker and Customer” the mythology accordingly involves review of literature in the theoretical, practical, legislative and judicial aspects.

The sources include published books on Banking, Manual and Journals of Banking and Negotiable Instruments Act, commentaries by leading authorities, legal web sites, judicial precedent and outstanding case laws on banking principle. Besides this a number of judicial decisions as reported in law journals, proceeding and public research papers on Banker – Customer relationship are followed as well.

Findings and Suggestions:

Finding:

Various examples of deficiency in service rendered by Banker

1. Unlawful dishonor of cheque-

In a case, the cheque of an applicant for convertible debenture on right basis was unlawfully dishonored by the payee banker on the ground of deficiency of funds. Consequently, no debentures could be allotted to him. The Consumer Forum awarded him compensation based on the market price of the shares that the applicant might have got on conversion of debentures, if the same were allotted to him.

2. Negligence in case of safe deposited lockers-

Negligence in taking all the necessary precautions by the banker in ensuring the safety of the safe deposit lockers/safe custody lockers is another ground for action by the customer under the Act.

The Consumer Disputes Redressal Commission of Maharashtra indicated one of the nationalized banks of negligence to render necessary service to safeguard the custody of ornaments locked in its safe deposit vaults. The bank was ordered to pay Rs. 1.26 lacks to the customer towards the cost of ornaments. Bank's plea that the relationship between the banker and the customer was that of landlord and tenant was rejected by the commission and it was found guilty of gross negligence.

3. Negligence in case of guarantee-

In case of a bank guarantee, the bank charges a services charge from the customer and thus renders a service for a fee. If the customer does not fulfill his obligation, banker is bound to comply with the provisions of the guarantee given by him. The banker must be conscious of his additional obligations and liabilities under the Act.

Suggestions :

- The bank will have to provide customer with details of various types of accounts that he may open with the bank.
- Bankers have to assist customer in making choice on what type of account would be suitable to customer, based on his needs and requirement.
- The bank must prior to opening an account, take all relevant documents and information from the customer as prescribed by the 'know your customer' (KYC) guidelines issued by the Reserve Bank of India. Such other norms and procedure adopted by the bank prior to opening the account in order to avoid further difficulty/ loss.
- The bank has to take precautions while verifying documents submitted by customer and information filled in the form. Banker has to follow due diligence process includes providing documentation verifying customer's occupation or business and source of funds.
- As part of the due process the bank has to follow strictly the requirement to take an introduction from a person acceptable to the bank if they so deem necessary, and he has an account in that particular branch only where a customer, who wishes to open an account.
- The bank is required by law to obtain Permanent Account Number (PAN) or General Index Register (GIR) Number or where you do not possess such registration, declaration in Form No. 60 or 61 as specified under the Income Tax Rules, this is to be followed strictly.
- In the event that the account opening process is likely to take longer than normal, the bank should inform customer of the revised timeline.

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