



# ELECTRONIC BANKING SERVICE UNDER CONSUMER PROTECTION ACT – AN OVERVIEW

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## INTRODUCTION

Modern banks have opened their doors to give competition to the existing banks. This has also provided banking industry with new taste in competition. Information technology allows customers to transact without any fear of being interrupted. Their expectation level is galloping. Demands and priorities are changing every day. In today's world, customers no longer want old banking products. They want instant gratification and they can now do so through their smart phones. Never in the history of banking has the power so firmly been in the hands of customers as it is today. The battle for survival in the competitive market is the most challenging part of any entrepreneur's career. There are many factors that can affect a person's survival. This has led to various banks in India adopting various innovations in their operations. The present paper highlights the recommendations of the Narasimhan committee, recent innovative practices in this sector, relationship of banker and customer relationship and banking customer as a consumer under consumer as according to Consumer Protection Act, 1986.

The recommendations of the Narasimhan Committee provided the plan of the reforms, especially with regard to banks and other financial institutions. In 1991, India launched a comprehensive financial sector liberalization program. The objective of the program was to liberalize the country's financial industry. This process involved the decontrol of interest rates and various other measures. The financial liberalization was carried out to improve the efficiency and profitability of the financial sector. The banking sector is the main source of finance for many households and SMEs in India. It is also the main source of funds for the country's large enterprises. And also provides many other financial services. Several major reforms were introduced in the Indian banking sector to improve its efficiency and performance. These reforms were carried out in order to make it more competent and efficient. The Eighth Five Year Plan was formulated after the country experienced a period of political instability. It was triggered by the failure of the previous Five Year Plan. In 1991, the country suffered a major foreign exchange crisis. It caused the economy to become vulnerable. The country experienced two Annual Plans in 1992 and 1993. The Eighth Five Year Plan included various measures designed to stimulate economic growth and development. These included the privatization of certain sectors and the liberalization of others. During this period, India joined the World Trade Organization.<sup>3</sup>

The objective of the Eighth Five Year Plan was–

- To modernize the industrial sector through modern technology & help economy grows.
- Opening up of the Indian economy to counter the foreign debt burden which was a significant threat for the country.

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<sup>3</sup>.<https://planningtank.com/development-planning/liberalization-privatization-globalization-lpg-model-in-india>



- Increasing the rate of employment and reducing poverty.

This plan aimed to improve the country's productivity and employment rate. It also tackled various issues such as reducing poverty and improving self-reliance. Human Resource Development was also a major aspect of the Eighth Five Year Plan. It was focused on developing people with the right skills and attitudes to contribute to economic growth. The Eighth Five Year Plan established the framework for the country's economic reforms, which included the privatization of certain sectors and the opening of new markets. It also focused on human resource management, which included education and training.<sup>4</sup>

Services rendered by-bankers are within the ambit of service as defined under the Consumer Protection Act, 1988. Definition of “service” as under Section 2(1) (o) as:

“Service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.<sup>5</sup>

Banking is the business of Banks. “Banking” defined under Section 5(b) of Banking Regulation Act as:

Banking means the accepting for the purpose of lending or investment of deposit of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise. When banks provide facility of locker or advance loan, they certainly render service. A State Bank or nationalised banks render as much service as private banks.

Banks facilitate or provide to its customers or non-customers. All persons having account in the bank are called Customer. A Bank renders various facilities or services such as provision of remittances, accepting deposits, provision of lockers, facility of cheques, collection of cheques, issue of bank draft or facility of loan, etc. to customers and non-customers.<sup>6</sup>

## PURPOSE OF THE CONSUMER PROTECTION ACT

The Consumer Protection Act was enacted to promote the protection of consumers-

1. Safety, quality, purity, potency, healthfulness, durability, performance, repair ability, effectiveness, truthfulness, dependability, availability, and cost of any real or personal property or tangible or intangible goods, services, or credit;
2. Preservation of consumer choice and a competitive market;
3. Price and adequacy of supply of goods and services;
4. Prevention of unfair or deceptive trade practices;
5. Maintenance of truthfulness and fairness in the advertising, promotion and sale by a producer, distributor, lender, retailer or other supplier of such property goods, services, and credit;
6. Furnishing of full, accurate, and clear instructions, warnings and other information by any such supplier concerning such property, goods, services, and credit;

<sup>4</sup><https://planningtank.com/development-planning/liberalization-privatization-globalization-lpg-model-in-india>

<sup>5</sup> R.N. Chaudhary, Banking Laws, Central Law Publication, 1<sup>st</sup> Edition, 2009, p 572.

<sup>6</sup> R.N. Chaudhary, Banking Laws, Central Law Publication, 1<sup>st</sup> Edition, 2009, p 572.



7. Protection of the legal rights and remedies of consumers;
8. Right to consumer education.
9. Providing of estimates of the cost and benefits of programs and activities established by Federal Government regulations and legislation.

It is the purpose of section 24 of this Act to establish a means for estimating in advance the consumer cost and benefits of Federal legislation or The rules that apply to banks are designed to prevent the adoption of programs whose costs are too high to consumers. They are also designed to ensure that banks do not render service when they do not provide it.<sup>7</sup>

Customers to whom services are rendered by the banks are consumers within the meaning of Section 2(1)(d)(ii) of Consumer Protection of Act. This observation of the Supreme Court occurs in Standard Chartered Bank Ltd V. Dr. B.N Raman.<sup>8</sup> The question before the court is whether the customer of the bank comes under the definition of consumers under Section 2(1)(d)(ii) of the consumer protection Act. The Supreme Court said that banking is a commercial function. Banking means acceptance, for the purposes of lending or investment or deposit of money from the public, repayable on demand or otherwise. The intention of the 1986 Act is to protect consumers of such services rendered by banks. Banks provide their customers with a variety of services and facilities. Those customers are consumers under Section 2(1)(d)(ii) of the consumer protection Act.<sup>9</sup>

The reforms in the banking sector were initiated to address the various factors that affected the performance of the banks.

Some of these causes were:

- Great emphasis on directed credit programmers.
- Skilled interest rate structure.
- The excessive regulations on administration and managerial resources.
- Deficiency of focus on profitability.
- Monopoly on banking.
- Negligence of suitable Accounting and Risk Management System.
- Lack of operational transparency.
- Great support from government.

The reforms were introduced with an aim to bring about a paradigm shift in the banking industry. Hence, banking reforms were made an essential part of the liberalization process. In 1991 starting of financial reform provided the necessary platform for the banking sector to operate on the basis of working flexibility and functional autonomy; enhancing efficiency, productivity and profitability.<sup>10</sup>

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<sup>7</sup> <http://www.lexuniverse.com/consumer-protection-laws/us/Purpose-of-the-Consumer-Protection-Act.html> last visited date on 5<sup>th</sup> November, 2012.

<sup>8</sup> (2006)5 SCC 727

<sup>9</sup> Avtar Singh, Banking and Negotiable Instruments, Second Edition, 2011, Eastern Book Company, Lucknow

<sup>10</sup>. Online @ www.ijtsrd.com | Volume – 1 | Issue – 6 | Sep - Oct 2017 Page: 433



## RBI LAID DOWN BASIC RIGHTS FOR BANK CUSTOMERS

The RBI released a Charter of Customer Rights specifying five basic rights that bank customers enjoy. Though there is already a framework outlining service standards, industry watchers feel a direct intervention from the RBI in the form of the charter will make the process more robust<sup>11</sup>.

*“This will simplify matters for a layperson. Customers can now cite this charter to get their rights,”* says certified financial planner Harshvardhan Roongta, CEO, Roongta Securities.

The central bank has also advised the Indian Banks’ Association (IBA) and the Banking Codes and Standards Board of India (BCSBI) to formulate a ‘Model Customer Rights Policy’ based on the charter’s principles. These regulations would help strengthen the framework for customer service. In case a bank violates any right as laid down by the RBI, customers can approach the customer services division of the apex bank. “With this charter, the RBI will have legislative powers to act against the errant banks,” says a retired head of a large public sector bank.

## RIGHTS OF CUSTOMERS AS NOTIFIED BY THE RBI THAT CUSTOMER SHOULD BE AWARE OF.

1. *Right to fair treatment:* This right prohibits banks from discriminating against customers on grounds of gender, age, religion, caste and physical ability while offering products and services. Banks can, however, continue to offer differential rates of interest or products to customers. “The financial services provider may, however, have certain special products which are specifically designed for members of a target market group or may use defensible, commercially acceptable economic rationale for discriminating between its customers,” the central bank had elaborated in the draft charter released in August.

2. *Right to transparency, fair and honest dealing:* The purpose of the charter is to make bank documents more transparent and easier to understand. The banks are responsible for communicating effectively with their customers. This includes informing them about the product’s price, risks and responsibilities. “Any features that may disadvantage the customer should be made known to him. Important terms and conditions should be clearly brought to the notice of the customer,” the charter says.

2. *Right to suitability:* Despite various regulations, complaints related to the mis-selling of insurance policies are still prevalent in the distribution space. The lure of higher commissions and higher sales fees can lead to sales officials pushing products without assessing their suitability. Officials may find it hard to sell market-linked insurance to senior citizens due to

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<sup>11</sup>. <https://economictimes.indiatimes.com/industry/banking/finance/banking/five-basic-rights-for-bank-customers-laid-down-by-rbi/articleshow/45584445.cms?from=mdr>



the new regulations. Due to the new law, banks have to sell products that are geared towards satisfying the needs of their customers.

4. *Right to privacy*: Banks are obliged to keep the personal information of their customers confidential. This means that they may disclose it only if they need to do so in order to comply with legal requirements or to protect the interests of their customers.

Customers have the right to know how they are being treated by banks when it comes to their personal information. This Charter states that banks are obliged to safeguard their privacy when it comes to communicating with them. “There have been instances where bank officials, on the basis of transaction details, have asked customers to route their investments through them (since banks also act as distributors for mutual funds and insurance companies). This is unethical,” says Roongta.

5. *Right to grievance redressal and compensation*: The right to grievance redressal comes with the responsibilities of banks. The charter makes banks accountable for their own products as well as those of third parties like insurance companies and fund houses. They will no longer be able to wash their hands of the responsibility once the product is sold. Banks will have to communicate the policy for compensating for mistakes on their part, lapses in conduct and non-performance or delays. The redressal and compensation policy will have to state the rights of customers when such events occur.

#### CHANGING ROLE OF BANKS IN INDIA, SINCE 1991:

- Better customer service
- Mobile Banking
- Bank on wheels
- Portfolio Management
- Issue of Electro-magnetic cards
- Universal Banking
- Automated teller Machine(ATM)
- Internet Banking
- Encouragement to bank amalgamation
- Encouragement to personal loans
- Marketing of mutual funds
- Social Banking

#### CONSUMER PROTECTION ACT LAYS DOWN PROCEDURE FOR FILING COMPLAINT AND APPEAL

Under the Consumer Protection Act a complaint can be filed against a trader or service provider for unfair or restrictive trade practices, including:

- 1.Sale of defective or hazardous goods
- 2.Provision of inadequate services
- 3.Maximum retail price (MRP) is less than Charge



An individual may seek reliefs under Consumer Protection Act:

1. Repair or replacement of defective goods, or removal of the deficiency in service
2. Refund of price paid for defective goods or inadequate service
3. Refund of additional money charged
4. Withdrawal of goods from the stock, which are hazardous to life or safety
5. Compensation for the injury or loss suffered due to the trader or service provider's negligence.

A consumer may also seek from the wrong-doer additionally the expenses of filing and enforcing the complaint.

### FILING A COMPLAINT UNDER THE CONSUMER PROTECTION ACT, 1986

A complaint may be hand-written or typed.<sup>12</sup> A complaint shall be instituted, if the value of goods and services and the compensation claimed does not exceed Rs. 20 lakh, the complaint can be filed in the District Forum; if it exceeds Twenty lakh Rupees but does not exceed Rs. One crore, the complaint can be filed before the State Commission; and if it exceeds Rs. One crore, the complaint can be filed before the National Commission.

The complaint can be filed in the local limits of whichever jurisdiction the opposite party is located in. It can also be filed if the defendant is availing himself or herself of business or has a branch office located elsewhere.<sup>13</sup>

In case, several customers seek damages from the same party, they can collectively file a complaint with the State or Central Government. A consumer complaint does not require any stamp duty or court fee. The complaint must explicitly specify the nature of the issue and the desired relief sought by the individual(s). The complaint is to be filed within two years from the date on which cause of action has arisen. There is no fee for filing a complaint. Even an affidavit is not required in stamp papers. A complaint can be made by sending a mail or by calling an authorised agent. Usually, the complaint form requires around 3-5 copies of the original.

A complaint filed under the Consumer Protection Act is required under law to be settled within 90 days of issuing a notice to the opposite party. Under the Consumer Protection Act, a complaint can be settled within 90 days of the date of the notice to the other party. However, in cases where a sample is needed to be tested for authenticity, the case may take up to 150 days.

### APPEALS

Section 15, 19, and 23 provide the provisions, of appeal. Appeal under the Act arises, in three stages against the order of;

1. District Forum to State Commission or,
2. State Commission to the National Commission or,
3. The National Commission to the Supreme Court

<sup>12</sup> <http://www.lawisgreek.com/the-consumer-protection-act-1986> last visited date on 28<sup>th</sup> September, 2018.

<sup>13</sup> <http://www.lexorates.com/articles/the-consumer-protection-act-1986/> last visited date on 28<sup>th</sup> September, 2012.



1. From District Forum to the State Commission (Section.15) :

An individual who is dissatisfied with an order made by a district forum may prefer to appeal against such order by submitting a written appeal within 30 days from the date of the order. If the State commission has not found sufficient cause to entertain an appeal within thirty days after the date of the original appeal, it may do so again. An appeal made by a person for not paying the amount due under an order of the District Court shall be entertained by a State Commission unless the person has deposited the entire amount in the prescribed manner.

2. Appeal from the State Commission to the National Commission (Section.19):

An order made by the State Commission under its powers under section 17 may be appealed against within a period of 30 days from the date of its order.

The national commission may also entertain an appeal if it is satisfied that there is sufficient cause for not filing the appeal within 30 days.

3. No appeal under this section shall be entertained unless the amount is less than fifty percent of the order of the State commission.

4. Appeal from the National Commission to the Supreme Court (Section.23):

Any individual aggrieved by an order issued by the national Commission may appeal against it to the Supreme Court within 30 days from the date of its order. The Supreme Court may also allow an appeal after the deadline for filing has expired.

The Supreme Court shall entertain the appeal of persons who are not required to pay an amount in accordance with an order of the national commission unless they have deposited the amount in the prescribed manner.

## BANKING CASE AND CONSUMER PROTECTION

Customers to whom services are rendered by the banks are consumers within the meaning of Section 2(1)(d)(ii) of Consumer Protection of Act. This observation of the Supreme Court occurs in *Standard Chartered Bank Ltd V. Dr. B.N Raman*.<sup>14</sup> The question before the court is whether the customer of the bank comes under the definition of consumers under Section 2(1)(d)(ii) of the consumer protection Act. The Supreme Court said that banking is a commercial function. Banking means acceptance, for the purposes of lending or investment or deposit of money from the public, repayable on demand or otherwise. The intention of the 1986 Act is to protect consumers of such services rendered by banks. Banks provide or render service or facility to its customers. This Act applies to consumers who are within the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act. If the Supreme Court accepts an appeal, it must show that there was enough cause for the consumer to file a petition.<sup>15</sup>

The Disputes Redressal Agencies (District Forums, State Commissions and National Commission) under the Consumer Protection Act, 1986 adjudicate upon the complaints of consumers relating to defaults in products and deficiency in service. 'Service' as defined in the

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<sup>14</sup> (2006)5 SCC 727

<sup>15</sup> Avtar Singh, *Banking and Negotiable Instruments*, Second Edition, 2011, Eastern Book Company, Lucknow



Act includes the provision of facilities in connection with banking. The principles laid down by the various decisions of the Consumer Commissions included in the compilation can be summarized as under:

### **BANKS HELD LIABLE FOR DEFICIENCY IN SERVICE**

In a large number of cases, banks have been pulled up for deficiency in service and compensation has been awarded to complainants by the Consumer Courts. Some of the cases are analyzed hereunder:

Banker's obligation to maintain the secrecy of the customer's account. A banker must not disclose the state of his customer's or his affairs except on reasonable and proper occasions (Hardy v. Veasy & others<sup>16</sup>). Although this was not precisely a legal duty, this was the first step towards recognizing that bankers had an obligation to their customers to keep personal financial affairs confidential.<sup>17</sup> This position was later legally accepted<sup>18</sup> in the case of *Tourier V National Provincial and Union Bank of England Ltd*<sup>19</sup> by Bankers.

It may be to protect the reputation of a customer Exceptions;

1. When there is an express consent of the customer
2. When there is an implied consent of the customer

### **CERTAIN CIRCUMSTANCES UNDER WHICH CUSTOMERS' INFORMATION DISCLOSED ARE:**

1. When he is compelled by laws of the country
2. Under the Income Tax Act, 1961
3. Banker's books Evidence Act
4. Reserve Bank of India Act, 1934
5. Banking Regulation Act
6. Companies Act
7. Criminal procedure Code
8. Foreign Exchange Act
9. under other legislation
10. Under Garnishee order

As discussed above there have been many deficiencies on part of the bank authorities while providing services to its customers, and at the same time, there have been instances when the bankers are fulfilling their duties properly but it's the customers who are at fault. In either of the situations, the overall banker-customer relations are being suffered.

To solve the clashes and the disagreements between them, legislature has taken many steps. There have been establishment of various Consumer Redressal Forums, Debt Recovery Tribunals (DRTs), Banking Ombudsman Scheme (a non legal forum) etc. Further, the legislature has made many provisions in various acts to ensure convenience in banker-customer

<sup>16</sup> [1868] LR 3 Exch 107

<sup>17</sup> Muharem kianieff, 'Jones v. Tsige: A banking Law Perspective' [2013] 44(3) Ottawa Law Review <https://scholar.uwindsor.ca/lawpub/63/> accessed 20<sup>th</sup> September 2019

<sup>18</sup> ML Tannan, Tanna's Banking Law and Practice in India (23<sup>rd</sup> edn, Lexis Nexis 2010) 658

<sup>19</sup> [1923], 1 KB 461 at 474





relation. Legislature though has taken many measures by enacting appropriate provisions in acts like Banking Regulation Act, Consumer Protection Act, RBI guidelines to the bank, also few relevant provisions in Negotiable Instruments Act 1881, Contract Act etc, still it failed in its proper implementation in a way to curb all problems. So the need of the hour is to ensure that these provisions, rules and guidelines are strictly followed, failing which strict actions must be taken. Many guiding principles and conditions in the form of decree were laid down in many of the cases which acts as precedents, must also be given due importance.

In order to adjudicate a matter before the Consumer Dispute Redressal Forums, the parties in question must be bound by a contract or any arrangement for rendering service. The main problem which the consumer forums have been facing is their scope within the CP Act. At many instances, it has been seen that many cases involving complicated questions of law and facts have been relegated to the civil courts by the consumer forums. However, the Supreme Court in the case of *CCI Chambers Co-Operative Housing Society Limited v. Development Credit Bank Limited*<sup>20</sup> held that the forums have been established and conferred with the jurisdiction in addition to the conventional courts. They have been established with power to solve and provide speedy justice, in compliance with the principles of natural justice, as are amenable to their jurisdiction. So relegation of the matters to the civil courts should not be done mere on the reason that they involve some complicated questions of facts or law.

Also, the introduction of BANKING OMBUDSMAN SCHEME by the Reserve Bank of India, with the object of enabling resolution of complaints of the consumers relating to certain services rendered by banks and to facilitate the satisfaction or settlement of such complaints, provides expeditious and inexpensive forum to bank customers for resolution of their complaints relating to deficiency in banking services. The Banking Ombudsman is a non-profit organization that aims to promote conciliation or mediation between a customer and a bank. Since the liberalization of the banking system has transformed the Indian economy, it has led to the strengthening of the banking system.

The various committees' recommendations have strengthened the banking system. This is because banking has become more mass-oriented.<sup>21</sup>

## SUGGESTIONS AND CONCLUSION

Liberalisation of the economy has brought about a boost in the Indian markets, and this had led tremendous competition. This cut-throat competition has led the producers of goods and services find new means to evade the legal regime of consumer protection. The concern for the protection of the interests of consumers has been expressed all the times and all ages, the modern version of the concept of consumer protection is the result of consumer movements which first started in the US. In the beginning consumer organisations spearheaded the movement for protection of consumer interests through municipal laws and legal institutions. Ignorance of fundamental rights of consumers is encouraging the players in the market to indulge in unfair market practices. Banking sector today, is the fastest growing area and this is one of the reasons that banking services have been increasingly brought under the scanner of the Courts by the consumers.

<sup>20</sup> (2004) 1 CPJ 24 (NC).

<sup>21</sup> <http://www.legalservicesindia.com/article/1023/Liberalisation-of-Indian-Banking-&-Regulation.html>



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FROM THE ABOVE MENTIONED DISCUSSIONS IN DETAIL, IT MAY BE SUGGESTED:

- Need to review and amend main laws governing Indian Banking Industry
- Need to faster computerization, technology up-gradation
- Need to proper training to banking staff about the use of digital application
- Need to Depoliticizing of banks
- Need to adopt professionalism in banking
- Need to reviewing bank recruitment<sup>22</sup>

Since India has decided to shift toward a market-based banking system, it is very important that the policy makers create the conditions for the smooth functioning of such a system. Among the tasks that the government has to complete are the establishment of proper oversight bodies and other necessary institutions. These tasks are also linked to the restructuring of PSBs. If India continues with its current path of liberalizing its banking sector, it will be in a position to strengthen its banking system in the long run.

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<sup>22</sup><http://www.legalservicesindia.com/article/1023/Liberalisation-of-Indian-Banking-&-Regulation.html>