



CONTEMPORARY ISSUES IN BANKING AND FINANCIAL LAWS IN INDIA

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Abstract

The financial and banking sector played a vital in fostering the economy of any nation. Thus Banking laws have been drafted in such order to boost the economy of the country. This paper gave an insight to understand the overall banking and financial system and the laws that governs the banking transactions in India. This paper also highlights the contemporary issues in banking system as well as provides some collective measures to overcome these issues for a better enforcement of banking inclusivity.

Keywords: NPA, Reserve Bank of India, Bank frauds, FEMA, NIA Act, Scams

I. Introduction

In today's world, the role of Banks plays a crucial role in boosting economy of any country. The overall development of a country largely depends on the efficient working of its banking machinery. In present scenario, the work of a bank is not just to credit or debit the money but it had evolved its functions to many subjects i.e. loans, insurance, mortgage, stock market, pension schemes etc. In India, Banks are considered to be the backbone of the Indian financial system. The Reserve Bank of India (RBI) is the apex body in India which acts as supervisor and controller of banks. The RBI was established in 1935 as a central Bank of India and was nationalised in 1948. Since its nationalisation, it had evolved and honed the overall financial system of India. Despite the various banking and financial laws, India lacks to provide an inclusive monetary system due to several factors such as Non-performing Assets (NPA), Banks frauds, cyber security and scams in the Banking field. This paper discusses such contemporary issues in Indian Banking system.

II. History of Banking in India

The existence of banking is not a novel subject in India as banking exists from Vedic period. The issuance of loans and usury were frequent in

that period. The loans were referred as 'Rinda' were frequently mentioned in Rig Veda. During Mughal period, Banking took a great shape in India as they reformed the revenue system prevalent at that time. After the British rule, the foundation of modern banking were laid by various Charters promulgated by British Crown in India. The East India Company set three banks in India namely Bank of Bengal, Bank of Bombay and Bank of Madras which were jointly called as Presidential Banks. Later, all these banks were unified into one as Imperial Bank of India which were finally named as State Bank of India in 1955. The Reserve Bank of India was also established on 1st April, 1935 through RBI act 1934.

III. Banking Laws in India

India's banking laws are intended to control and oversee how banks and other financial institutions operating there operate. The Banking Regulation Act of 1949 is the main piece of legislation governing banking in India.

The following are some significant elements and laws pertaining to banking in India-

A. Banking Regulation Act, 1949: The main law governing banks in India is the Banking Regulation Act, 1949. It outlines the procedures for controlling, monitoring, and regulating the nation's banking institutions. The act outlines

various rules for bank management, operations, licensing, and governance.

B. Reserve Bank of India Act, 1934: The Reserve Bank of India (RBI) is the central bank of India and is in charge of regulating and overseeing banks under the Reserve Bank of India Act of 1934. The act outlines the RBI's authority and responsibilities, including its role in monetary policy, banking regulation, and the preservation of financial stability.

C. The Negotiable Instruments Act, 1881: The Negotiable Instruments Act of 1881 establishes the rules that apply to all forms of negotiable currency, such as checks, promissory notes, and bills of exchange. It establishes guidelines for their transfer, payment, and liability in the event of dishonour.

D. The Foreign Exchange Management Act (FEMA), 1999: The Foreign Exchange Management Act (FEMA) of 1999 governs foreign exchange transactions as well as the inflow and outflow of foreign currency in India. It gives the RBI the authority to oversee all foreign exchange transactions, including those involving banking and financial institutions.

E. Securities and Exchange Board of India Act, 1992 (SEBI Act): Although primarily concerned with securities markets, the SEBI Act is relevant to banking because it regulates a number of aspects of capital markets, including the regulation of banking companies engaged in securities-related activities.

F. The 2016 Insolvency and Bankruptcy Code (IBC), 2016: The Insolvency and Bankruptcy Code (IBC) offers an integrated framework for India's insolvency resolution and bankruptcy process. In the event of insolvency or default, it applies to corporate entities, including banks and financial institutions.

G. The Prevention of Money Laundering Act (PMLA), 2002: The Prevention of Money Laundering Act (PMLA) of 2002 aims to stop both money laundering and terrorism financing. It requires banks and other financial intermediaries to recognize suspicious transactions, report them, and keep records in accordance with the established standards.

H. The Consumer Protection Act, 2019: The Consumer Protection Act is aimed at defending the rights of consumers, including those who use banks. In case of disputes with banks or financial service providers, it establishes consumer forums and outlines the rights and remedies available to consumers.

IV. Contemporary Issues in Banking and Financial laws in India

There are several current issues in banking law that have arisen based on Indian banking laws. Some of the most important current concerns with Indian banking law are listed below:

1. Non-Performing Assets (NPA): The high proportion of non-performing assets, or bad loans as they are more commonly known, is a significant problem in Indian banking. These loans are difficult for banks to effectively manage and recover, which has a negative impact on their stability and financial health.

2. Governance and risk management: It's critical for banks to ensure sound governance procedures and strong risk management frameworks. Enhancing corporate governance standards, dealing with conflicts of interest, and bolstering risk management procedures are current issues that can help to reduce financial risks.

3. Technology and cyber security: As technology is used more and more in banking operations, data security and protection have taken on significant importance. Customers' data security, cybercrime prevention, and maintaining the resiliency of their digital infrastructure are challenges that banks must address.

4. Financial Inclusion: Despite significant advancements, India continues to struggle with achieving financial inclusion. Giving all facets of society, including disadvantaged and marginalized groups, affordable and accessible banking services is at the centre of the problem.

5. Regulatory Compliance and Anti-Money Laundering (AML): Banks are required to abide by a complicated web of regulatory requirements, which includes anti-money laundering regulations. For banks, it can be

difficult to ensure compliance with changing regulations and efficiently implement AML policies.

6. Cross-Border Transactions and Regulatory Harmonization: As Indian banks engage in cross-border transactions and broaden their global reach, concerns about regulatory harmonization, adherence to foreign laws, and risk management in cross-border operations arise.

7. Fintech and Digital Payments: Traditional banking models have been impacted by the emergence of fintech businesses and the rising popularity of digital payment platforms. Banks must overcome obstacles such as managing partnerships with fintech companies, adjusting to these technological advancements, and ensuring regulatory compliance with regard to digital payment systems.

8. Bankruptcy and Insolvency Proceedings: With the Insolvency and Bankruptcy Code now in effect, concerns about the effectiveness of the insolvency procedure and the resolution of stressed assets have gained attention. It can be difficult to balance the interests of different stakeholders and resolve insolvency cases on time.

9. Consumer Protection: It is a constant challenge to safeguard the rights of banking clients and settle disputes swiftly and fairly. Focus areas include ensuring efficient procedures for handling customer complaints and increasing the transparency of banking services and products.

These modern problems are a reflection of the dynamic nature of Indian banking laws and the difficulties that banks face in adjusting to shifting regulatory environments, technological developments, and shifting customer expectations.

V. Suggestions

Numerous actions can be taken to enhance the state of banking in India and address the earlier mentioned modern issues. Some measures as follows:

a. Enhancing risk management and governance:

- Raise the bar for corporate governance and encourage accountability in banking activities.
- Create impartial risk management committees to effectively identify, evaluate, and manage risks.
- Put in place reliable internal control systems to guarantee legal compliance.
- b. NPA Resolution and Asset Quality:
 - Put into action a pro-active strategy with a deadline for dealing with non-performing assets (NPAs) and subprime loans.
 - Make credit assessments more thorough and strengthen the loan underwriting procedures.
 - Improve debt recovery tribunals and other recovery mechanisms like asset reconstruction firms.
 - Encourage early resolution of stressed assets and loan restructuring.
- c. Adopting Technology and Cyber security:
 - Invest in a strong cyber security infrastructure to safeguard customer information and fend off online threats.
 - Encourage the use of cutting-edge technologies to improve the security and efficiency of banking operations, such as blockchain, AI, and machine learning.
 - Create detailed data protection and privacy frameworks to meet legal requirements.
- d. Banking Access and Financial Inclusion:
 - Carry out programs to increase the number of people who have access to banking services in underserved communities and vulnerable groups.
 - Promote the use of technology-based approaches to reach remote areas, such as mobile banking and payment platforms.
 - Simplify and streamline the account opening process to increase accessibility and inclusivity.
- e. Regulatory Compliance and AML Measures:
 - Strengthen regulatory oversight and guarantee that banking regulations are properly implemented.

- Clearly define the reporting requirements for banks and streamline the compliance process.
 - Intensify anti-money laundering (AML) controls and raise staff awareness of AML responsibilities.
 - Encourage closer cooperation between banks and regulatory bodies to exchange best practices and resolve compliance issues.
 - f. Regulatory harmonisation and cross-border transactions:
 - Facilitate international trade by putting in place efficient frameworks for regulatory coordination and cooperation.
 - Promote international collaboration in order to close regulatory gaps and harmonize standards.
 - Strengthen the processes used for cross-border due diligence to reduce the risk of tax evasion, money laundering, and the financing of terrorism.
 - g. Fostering Innovation and Collaboration:
 - Encourage cooperation between fintech companies and banks to spur innovation in banking services.
 - Create regulatory "sandboxes" that will make it easier to test and adopt cutting-edge business models and technologies.
 - Promote banking technology research and development to enhance customer satisfaction and operational effectiveness.
 - h. Consumer Protection and Grievance Resolution:
 - Strengthen consumer protection frameworks and make sure that customer complaints are handled efficiently.
 - Increased terms and conditions disclosure and improved transparency in banking products and services.
 - Encourage financial literacy programs to give consumers more power and allow them to make well-informed financial decisions.
- These steps could help to improve the state of Indian banking and address the current challenges the industry is facing, along with ongoing monitoring, evaluation, and adaptation to changing circumstances.

VI. Conclusion

The issues laid in the current banking laws and financial system have been revealed due to the financial and technological advancement in this sector. The change is constant and in view of this change, various efforts have to be taken for enhancement and advancement of banking laws in India. The trust of the customer have to be maintain in the current financial and banking system. The issues pertaining to the banking and financial framework that require continuous attention in the present scenario are non-performing assets, synchronization of digital banking with traditional banking, prevention of digital scams and promotion of financial inclusion. The government and RBI needs to collaborate to address these issues for their disposal in an effective manner.

VII. References

1. Dr. B.Vijaya, Professor, Contemporary issues and challenges in Indian banking sector, International Research Journal of Education and Technology, Volume 1 Issue 3 of 2020, Pg. 15-19.
2. Asmin Ali, Contemporary Issues in Banking and Financial Laws in India, Homeworkwala, <https://homeworkwala.com/contemporary-issues-in-banking-and-financial-laws-in-india>. (Last Accessed on 26th June, 2023 – 11:30 AM)
3. Dr. K.P.Bairagi & Mrs. Asmita Kulkarni (Author), Contemporary issues and challenges of Banking in India, Inspira-Journal of Commerce, Economics & Computer Science (JCECS), Volume 05, No. 02, Pg. 78-81
4. Srinjoy Mitra (Author), Contemporary issues and challenges in Indian Banking Sector, International journal of law management & humanities, Volume 6 Issue 2, Pg. 977-980.
5. Dr. Anjani Kant (Author), Lectures on Banking Law for Law Students, (4th Edition-2016), Pg. 4,5,6