



BANKING LAWS (2009). By R.N. Chaudhary and Suman Lata Singh. Central Law Publication, 107-Daryabhanga Castle, Allahabad - 211002. Pp xlvii +656. Price Rs. 300/-.

THE BOOK under review¹ presents an interesting account of the banking laws. In the preface, the authors set out the context for the book. According to the authors, the law of banking consists of the Negotiable Instruments Act 1881, the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934. The Negotiable Instrument Act was amended in 2002 and sections 138 to 147 were added in the Act to encourage the use of cheques and to enhance the credibility of the instrument. Further, the authors also aver that the age of science and technology has made the banking system a “highly automated and technology dependent”.²

The book is divided into nineteen chapters. Chapter one traces the history of banking and highlights that the banking activities were known in ancient and medieval India. However, it was mainly the introduction of principle of limited liability in 1855 that marked a new era in the history of public banks in India. The establishment of the Reserve Bank of India in 1935 and the passing of the State Bank of India Act in 1955 gave further impetus to the banking system in the country. Likewise, the nationalization of the fourteen major Indian banks on 19th July 1969 and six more banks on 15th April 1980³ expedited the role of banks in promoting the socio-economic development in a considerable manner. This apart, the Nariman Committee recommended a scheme known as ‘lead bank scheme’ which involved commercial banks, co-operative institutions, and government and semi-government agencies for the economic development of the backward areas. Moreover, the National Bank for Agriculture and Rural Development (NABARD) was set up on July 12, 1982 “for providing credit for the promotion of agriculture, small scale industries, cottage and village industries, handicrafts and rural crafts and other allied economic activities in rural areas with a view to promoting integrated rural development and securing prosperity of rural areas”.⁴ Consistent with the historical narrative, the authors have also presented a brief discourse on the functions and objectives of the Negotiable Instruments Act, 1881, the Banker’s Book Evidence Act, 1891, the Reserve Bank of India Act, 1934,

1. Ram Naresh Chaudhary and Suman Lata Singh, *Banking Laws* (2009).

2. *Id.* at iii.

3. The Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.

4. *Supra* note 1 at 3.

Industrial Reconstruction Bank of India (IRBI), Industrial Development Bank of India (IDBI), Regional Rural Banks (RRB), Security and Exchange Board of India (SEBI) and the Banking Regulation Act, 1949. However, analysis regarding the major trends and the nature of interface between the emerging legal-institutional framework of banking and the socio-economic context finds no space in the presentation.

Chapter two mainly deals with aspects like definition of bank, banking company and banker. In addition, the authors have also covered matters relating to the enactment of the Banking Laws Regulation Act and the reforms in the field of commercial banking through social control in banking companies and nationalization of major banks. The major objectives of nationalization were to eliminate concentration of economic power in the hands of a few; diversification of the flow of bank economic credit towards priority sectors such as agriculture, small industry, weaker sections and backward areas; accelerate economic growth and to extend banking facilities to rural and semi-rural areas with a view to mobilizing savings of the people for productive purposes. Regarding this, reference is made to the Supreme Court's reiteration in *Tara Chand Vyas v. Chairman Disciplinary Authority*.⁵ However, the constitutional validity of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 was challenged in *Rustam Cawasjee Cooper v. Union of India*,⁶ where the Supreme Court by a majority of 10:1 declared the Act invalid and unconstitutional. Consequently, 'the President of India promulgated another Ordinance on 14th February 1970 and re-nationalised the 14 major banks by removing the main objections of "hostile discrimination" and illusory compensation raised by the Supreme Court'. The ordinance was replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970⁷ to plug the loopholes raised by the Supreme Court.

The third chapter focuses on the Indian and foreign commercial banks, scheduled banks and non-scheduled commercial banks and commercial banks in the public and private sectors. Besides this, the advantages of internet banking or e-banking are also highlighted. Due to intense competition, banks have to reinvent and improve their products and services to make them more beneficial which is also facilitated by the electronic banking. According to the authors, "there is a shift towards a cash-less society, *i.e.*, physical cash, notes and coins will become a thing of the past and digital cash electronically held value will become the norm. Many non-cash payment systems are already in

5 (1997) 4 SCC 565.

6 AIR 1970 SC 564.

7 *Supra* note 1 at 47-48.



use. Telephone banking and bill payment are just a couple of examples”.⁸ And, as per the Internet and Mobile Association of India’s report on online banking, “it is convenient, it isn’t bound by operational timings, there are no geographical barriers and the services can be offered at a miniscule cost.”⁹

The fourth chapter deliberates on relations between the banker and customer, banking services and termination of banker customer relationship. This relationship has been characterized into various forms like debtor and creditor, trustee and beneficiary, principal and agent, trader and customer, bailee and bailor, guarantor and beneficiary, mortgager and mortgagee, pawnor and pawnee and lessor and lessee. Likewise, the fifth chapter concentrates on the statutory duties and obligations of customers. The sixth chapter focuses on the nature of bank accounts, deposits, cheques, passbooks, recovery of excess amount, closing of bank account, *etc.* The seventh chapter of the book deals with special cases which include the position of minors, married women, *pardanashin* women, illiterate persons, lunatics, trustees, executors and administrators, joint Hindu family, partnership firms, joint stock companies, clubs, societies and charitable institutions. The seventh chapter provides a descriptive account of the regulation relating to paid up capital, subscribed capital and authorized capital and voting rights of the share holders.

Eighth chapter narrates the procedure and other aspects relating to loans and advances which forms the major part of the bank’s income. The ninth chapter centres around the regulation and management of banking companies for which the Reserve Bank of India enjoys wide ranging powers. This chapter also delves into matters relating to suspension and winding up of banking companies. The Companies Act, 1956 contains elaborate provision for the winding up of companies but banking companies are wound up according to the Banking Regulation Act. The provisions of sections 397 and 398 of the Companies Act do not apply to banking companies. The last part of the chapter highlights the process of reconstruction, amalgamation, merger and acquisition.

The tenth chapter delineates the characteristics of Reserve Bank of India including its objectives, organizational features, functions and the supervisory and promotional roles. To facilitate the promotional role, the RBI established the bill market scheme in 1952, which has helped in establishing of financial corporations to provide credit to the agriculture and industrial sectors of the economy, encouraged regional rural banks, supported commercial banks to open branches in foreign centres, established an export-import bank to finance exporters and promote research in the areas of banking. With regard to the supervisory functions, a new department of supervision (DOS) was set up

⁸ *Id.* at 87.

⁹ *Id.* at 90.

to give operational support to the board for financial supervision. The board undertakes supervision of banks. The department of supervision has been set-up with its central office at Bombay and 116 regional offices at various centres.¹⁰

Chapter eleven discusses and delineates letters of credit (documentary credits), an instrument of credit issued by the bank to their customers in order to meet their financial needs. It discusses in detail two kinds of letter of credit, *i.e.* traveller's letter of credit and letter of commercial credit and the liability of issuing banker with the help of case law. In *Federal Bank v. B.N. Jog Engineering*,¹¹ Supreme Court held that letter of credit issued by the bank is similar to that of bank guarantee as per uniform customs and practice for documentary credits. The issuing bank cannot refuse payment and on payment it will be entitled to protection under section 131 of the Negotiable Instruments Act, 1881.

The twelfth chapter deals with e-banking. The authors have gone into every detail of computer banking and explained about the mobile banking service, e-commerce, electronic funds transfer and Magnetic Ink Character Recognition (MICR). Chapter thirteen concentrates on banking ombudsman aimed at providing relief to the public in the wake of deficiency in banking services, loans and credits. The office of banking ombudsman facilitates quick disposal of complaints against banks, improves the standard of customer service and enhances competitiveness of the Indian banks.

Chapter fourteen focuses on the Negotiable Instruments Act, 1881, which aims to legalize the system by which instruments contemplated by it such as promissory notes, bill of exchange and cheque could pass from hand to hand by negotiations like any other goods. Since the original Act of 1881 did not effectively deal with the aspects like dishonour of cheques, it was amended by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 2002. According to the amendment: (a) cheques can be issued in electronic form including the truncated cheque in its electronic image, thus e-cheques are introduced; and (b) cheques can be signed using digital signature and asymmetric crypto system; and dishonour of cheques has been made an offence due to insufficiency of funds in drawer's account. While the fifteenth chapter relates to parties to notes, bills, cheques and their liabilities, the sixteenth deals with transfer and negotiation. Similarly, the seventeenth chapter concentrates on the presentment and its various forms and the eighteenth on the system of crossing of cheques. The last chapter is devoted to banking services and the consumer law. Services rendered by bankers are within the ambit of service as defined under the Consumer Protection Act, 1986. This has been made explicit by citing various court decisions. In *Vimal Chandra*

10. *Id.* at 327.

11 AIR 2007 SC 1349.



Grover v. Bank of India,¹² the Supreme court had held that banking is business transaction of a bank and the customers of banks are consumers within the meaning of section 2(i)(d)(ii). Further, in *Lucknow Development Authority v. M.K. Gandhi*,¹³ the Supreme Court had held that the provisions of the Consumer Protection Act have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit-oriented legislation.

Apart from nineteen chapters with exhaustive coverage and upto-date case law, the book contains a table of cases running into 11 pages and compilation of banking terms and a detailed subject index and an annexure containing banking terminology. The authors deserve compliments for weaving together different aspects of banking law into a coherent manner. The book has emerged as a valuable addition to the literature on the subject. It would prove a useful text for the students of law as it entails the relevant material on the topic in the form of Acts, court decisions and references from the works of perceptive writers on the banking laws. It covers the statutory, legislative and juridical aspects relating to the field of banking. However, the book does not offer any critical perspective on the subject. The authors have avoided commenting upon issues which needed some explanation and critical evaluation. As a result, the presentation has remained descriptive rather than analytical, overwhelming the reader with textual details of the legal-institutional framework. The contemporary crisis-ridden financial markets have also led to banking crisis as witnessed in some flourishing economies in East Asia and elsewhere. Moreover, the current phase of liberalization has increased the role of foreign banks in the Indian economy.¹⁴ The RBI has also offered more licences to these banks. However, the “foreign banks may not fall in line with RBI’s desire”¹⁵ of strengthening the financial inclusion of the unbanked areas as “they operate only in centres which have a large business potential”.¹⁶ The authors should have reflected on such aspects and provided a needed space in the book. There seems to be some repetition and overlapping. Besides, an introductory chapter outlining the broad framework and highlighting the contours of the volume would have been relevant and added to the quality of the book.

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12. AIR 2000 SC 2181.

13. AIR 1994 SC 787.

14. “Foreign Banks: RBI Gets the Balanced Right”, *Economic and Political Weekly*, 9 Apr. 2011.

15. Saroj Upadhyay, “Caution over Foreign Banks”, *Economic and Political Weekly* 4-5 (May 7-13, 2011).

16. *Ibid.*

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