

Law Regulating the business banking

Legislative framework for the Banking sector

There are various banking laws and regulations which are mainly or partly related as to how the banks function in the country, they are as follows:

1. Reserve Bank of India Act, 1934

It was enacted to constitute RBI with objectives to regulate the issue of bank notes, keeping reserves to ensure stability in the monetary system and operate the nation's currency and credit system effectively.

The Act mainly covers the constitution, powers and functions of the RBI. The act does not deal with the regulation of the banking system except for Section 42 which is related to regulation of cash reserve ratio and Section 18 which mainly talks about direct discounting of bills of exchange and promissory notes.

Hence, The RBI Act deals with:

1. Incorporation, Capital, Management and Business of the RBI.
2. Various functions of the RBI which include: the issue of bank notes, monetary control, banker to the Central and State Governments and banks, lender of last resort etc.
3. Provisions talking about reserve funds, credit funds, audits and accounts.
4. Issuing directives and imposing penalties for violation of provisions of the Act.

2. Banking Regulation Act, 1949

It is deemed to be one of the most important legal framework for banks. It was initially passed as the Banking Companies Act, 1949 and it was eventually changed to the Banking Regulation Act, 1949 ("The BR Act"). Along with the RBI Act, The BR Act provides a lot of guidelines to the banks. They cover a wide variety of areas, some of the major provisions are:

- Banking is defined in Section 5 (i)(b), as acceptance of deposits of money from the public for the purpose of lending and/or investment. Such deposits can be repayable on demand or otherwise withdraw able by means of cheque, drafts, order or otherwise;
- Section 5 (i)(c) defines a banking company as any company which handles the business of banking;
- Section 5(i)(f) distinguishes between the demand and time liabilities, as the liabilities which are repayable on demand and time liabilities means which are not demand liabilities;
- Section 5(i)(h) deals with the meaning of secured loans or advances. Secured loan or advance granted on the security of an asset, the market value of such an asset in not at any time less than the amount of such loan or advances. Whereas unsecured loans are recognized as a loan or advance which is not secured;
- Section 6(1) deals with the definition of banking business; and
- Section 7 specifies banking companies doing banking business in India should use at least on work bank, banking, banking company in its name.

The BR Act also prohibits a certain kind of activities, which are:

- Trading activities of goods are restricted as per Section 8.
- Prohibitions: Banks are prohibited to hold any immovable property subject to certain terms and conditions as per Section 9. Furthermore, a banking company cannot create any kind of charge upon any unpaid capital of the company as per Sec 14. Section 14(A) further says that a banking company additionally cannot create a floating charge on the undertaking or any property of the company without prior permission of the RBI.
- A bank cannot declare dividend unless all its capitalized expenses are fully written off as per Section 15.

In addition to all the above sections, there are a bunch of other important sections in the BR Act, 1949. Following are the sections which hold some importance in the act:

- Section 11 and 12 deals with the Paid-up Capital, Reserves and their T&C;
- Section 18 specifies the Cash Reserve Ratio ("CRR") to be maintained by Non-scheduled banks and Section 19 (2) explains provisions about shareholding of a banking company. No banking company can hold shares in any company (in any form such as pledge, mortgagee or absolute owners of any amount exceeding 30% of its own paid-up share capital plus reserves **OR** 30% of the paid up share capital of that company, whichever is less; and
- Section 24 specifies the requirement of maintenance of Statutory Liquidity Ratio ("SLR") as a percentage (which is specified by the RBI from time to time) of the bank's demand and the different kind of liabilities in the form of cash, gold and securities which are free of any liability (also known as Unencumbered securities).

There are also some other **compliance requirements** which need to be fulfilled by a bank under the BR Act, 1949. They are as follows:

- Section 29 states that the bank has to publish its balance sheet as on 31st March of every financial year;
- Section 30 (i) – Audit of the balance sheet be done by the qualified auditors;
- Section 35 gives powers to RBI to undertake inspection of banks;

Other various sections deal with important returns which have to be submitted by banks to the RBI:

- Return of bank's liquid assets and liabilities: Monthly
- Return of bank's assets and liabilities in India: Quarterly
- Return of unclaimed deposits of 10 years and above: Yearly

As the compliances keep changing in our modern time, various other issues of compliance which are needed to be handled by banks, have been incorporated which either relate to Nomination facilities or Time period of preservation of bank books and records.

3. Prevention of Money Laundering Act, 2002 ("PMLA")

RBI has been a supervisor of Banking companies in India. It has been playing an important role in ensuring that the good corporate governance practices are being followed by the banking companies. RBI's various guidelines in M&As, pattern of shareholding, restrictions on various issues can be seen as some of the important steps by RBI to ensure good corporate governance practices of banks in India.

Laundering means acquiring, owning, possessing or transferring any proceeds of money of crime or knowingly entering into a transaction which is related to these proceeds. Involvement in the crime directly, indirectly, concealing or aiding in the concealment of proceeds or gains of crime within or outside India. It can be described as process for conversion of money obtained illegally to appear to have originated from legitimate sources. There are said to be three stages in which money laundering takes place:

1. **Placement** – When the cash is deposited in the domestic banks or is used to buy valuable goods such as precious metals and work of art.
2. **Layering** – After the cash has entered into the financial system, the funds are converted by transfers to different destinations. Bank accounts are opened at different locations and funds are transferred as quickly as possible. Transfer is also done in another subtle way of breaking the amount into small stashes, where the amount doesn't come on the radar of the banks. The small amount is meagre in front of the limits set up by the bank. This makes them look like a daily, trivial and a normal transaction.
3. **Integration** – Launderer attempts to justify the money obtained through illegal activities is legitimate. Through different way, attempts are made at this stage, like using front office of companies, using the tax havens and offshore units, using these funds as security for loans raised.

PMLA emphasises on combating money laundering in India with three main objectives:

To prevent money and control money laundering to confiscate and seize the property obtained from laundered money, also to deal with any other issue connected to money laundering in India.

The act establishes that anybody who directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projective it as untainted property should be guilty offences of money laundering. PMLA identifies certain provisions in the Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, the Arms Act, the Wild Life (Protection) Act, the Immoral Traffic (Prevention) Act and the Prevention of Corruption Act, the proceeds of which would be covered under this Act.

The department entrusted with all the work related to the investigation, attachment of property, proceeds of crime relating to all the scheduled offences under the act and filing of complaints to the Directorate of Enforcement, which also deals with offences under the Foreign Exchange Management Act. Non-compliance to the provisions of the act will be an offence and these offences are cognizable and non bailable. Punishment is rigorous imprisonment for not less than 3 years and up to 7 years and fines are to be levied according to the gravity of the offence. Enforcement Directorate, as mentioned earlier is the designated authority to track cases of money laundering.

As per the provisions of the Act, banking companies, financial institutions and intermediaries should maintain the record of transactions, the identity of clients etc. A director who is appointed by the Central Government has the right to call for records and impose penalties in case of failure of the banking company and other intermediaries. The Central government in consultation with the RBI has framed rules regarding the maintenance of records, retention period of records, verification of the identity of the client better known as KYC norms and submitting details and information to the director when called upon.

To ensure compliance with the PMLA, the banking company should comply with the KYC norms without any kind of deviation. KYC norms are applicable to both new and existing client accounts. One of the main objectives is to get a clear picture of the identity of the customer. The identification does not end with obtaining and retaining copies of the PAN card, AADHAR card and other documents which are specified. The banks should have photo identity, and address proof documents to ensure relevant details about him such as the status of the customer, relevant documentary verification to confirm the status, declaration about the multiple bank account details, source of income, source of funds, and expected income and activities in the accounts etc., are obtained and bank records are updated with these details.

Banks should also set up internal control checking systems, whereby the system can be aware and easily identify unusual bank transactions which can give the power to officials to take appropriate action. Banks should be very careful to avoid incidents of Money Laundering at the entry level itself. This precautionary

action on the part of bank officials and the inbuilt warning system in the computers of banking companies would go a long way to control the menace of Money Laundering. Banking companies should also ensure that as part of an effective control system, that all the employees at all levels should be informed and trained to practice anti-money laundering to safeguard not only the customers funds but also to be proactive to avoid incidents of money laundering.

All the auditors of the banking company (external or internal) including the Statutory Auditors and the Reserve Bank of India inspectors should also include the verification of the Anti- Money Laundering procedures as part of their audit and inspection of banking companies. They should additionally ensure that all the required guidelines and directives in respect of Anti Money Laundering including the adherence to the KYC norms, monitoring of accounts, maintenance of records, reporting of high volume transactions, suspicious transactions, filing of required returns to the authorities and proper control mechanism are adhered to. The executives of the banking companies should ensure monitoring and controlling of such incidents.

Role of the Banks

All kinds of banks are covered under the Act. The money launderers can open deposit accounts with banks in fake names and banks will be required to be vigilant for not becoming a party to such transactions. It is suggested that banks should do a full-scale customer due diligence before opening an account. This prevents the banks from being used, by being part of a criminal conspiracy for money laundering or terror financing.

The banks should also observe the reasonable and logical norms for record keeping, reporting, account opening and monitoring transactions. The act has several provisions regarding money laundering transactions which include maintenance of a record of all transactions relating to money laundering. These records should be saved up for at least 10 years from the date of cessation of the particular transactions between the client and the banking company.

The government has set up a Financial Intelligence Unit (FIU-IND) to track and curb offences of money laundering. Banks, financial institutions, stock brokers etc. have to report non-cash transactions totalling to over 1 crore a month and cash transactions of 10 lakh a month, to Financial Intelligence Unit.

4. Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act, 1999 deals with the regulation and management of foreign exchange. Its objective is to amend laws related to foreign exchange so that foreign exchange markets can be developed and foreign trade and payments increase. The Act extends to the whole of India. It came into effect on 1 June 2000.

Various provisions of the act are-

- **Section 3**– No Indian resident, unless authorised by the Act, is allowed to deal in or transfer foreign exchange to an unauthorised person, make any payment to a resident outside India, receive any payment through a resident outside India, or enter into a financial transaction to acquire any asset outside India.
- **Section 4**– No Indian resident, unless authorised by the Act, is allowed to hold, acquire, own or possess foreign exchange, foreign security or any immovable property outside India.
- **Section 7(1)**– Every exporter of goods has to provide the Reserve bank or such authority a declaration which represents the full value of exports, or if full export value is not determinable, then the value which the exporter expects to receive on the sale of goods outside India.
- **Section 11**– The Reserve Bank has the power to give directions to an authorised person related to doing or abstaining from doing any act which is connected to foreign exchange or foreign security. It may also seek information from an authorised person as it deems fit. If the authorised person breaches any direction of the Reserve Bank, a penalty may be imposed on him.

5. Limitation Act, 1963

Deemed to be one of the most important law in the aspects of Lending. This particular Act gives the power to the lending bank in taking legal action against the borrower in case he defaults on his loan payments.

The Limitation Act, 1963 ("LI Act") specifies a certain period within a suit or an appeal or any kind of application can be filed. It basically means that there is a period of limitation which is accordance with the LI Act. A banker is allowed to take action by the filing of any particular suit, application or appeal and apply

for any kind of recovery ONLY if documents are within the period of limitation. If the documents are expired or time-barred, the banker would have no choice to proceed with any kind of legal recourse to recover any kind of dues.

Hence, the lending banker should be extremely careful in regards to the loan documents. There should be a kind of system which he follows to check that all the documents in his possession are valid and not time-barred. Typically, the responsibility is on the lending side to keep all the legal documents as valid, executed and are all within the required limitation period as prescribed by the LI Act. This can be deemed as the most crucial step in the credit management of banks.

Period of Limitation for certain documents

Nature of Documents	Limitation Period
A Demand Promissory Note	Three years from the date of DP Note.
A Bill of exchange payable at sight or Three years when the bill is presented upon presentation	Three years when the bill is presented.
An Usance Bill of exchange	Three years from the due date.
Money payable for money lent	Three years from the loan was made.
A guarantee	Three years from the date of invocation of the guarantee.
A mortgage – enforcement of payment of money	Twelve years from the date the money sued becomes due.
A mortgage – foreclosure	Twelve years from the money secured by the mortgage becomes due.

A mortgage – possession of Immovable property.	Thirty years when the mortgagee becomes entitled to possession.
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Revival of Documents

Lending bankers are expected to have valid and executed legal documents as per the provisions of the LI Act. If the limitation period expires, the banks should arrange to obtain a fresh set of documents from the borrower. Such a situation is usually discouraged. There are a few situations where a limitation period can be extended, they are:

1. **Acknowledgement of Debt:** As per Section 18 of the LI Act, obtaining an acknowledgement of a certain debt in writing across a requisite revenue stamp from the borrower before the expiration of the prescribed limitation period can typically help in the extension of the limitation period.
2. **Part payment:** When repayment of a loan is made by the borrower himself or his agents, before the expiry of documents (Section 19 of the LI Act). Evidence of such payments should be in handwriting or under the sign of the borrower or his agent.
3. **Fresh Documents:** When the lender bank obtains a fresh set of documents before the expiry of limitation of the original documents, a fresh period of limitation will start from the date of when the fresh documents were executed. A time-barred debt can be revived under Section 25 (3) of the Indian Contract Act, 1872 by only a fresh promise by the borrower in writing and signed by him or his agent. A promissory note or fresh documents executed for the old or barred debts will give rise to a fresh cause of action and a fresh limitation period will be available from the date of execution of these documents.
4. **Court Holiday:** If the court is closed on the prescribed period of any suit, application or appeal which falls on that particular date, then that suit, appeal or application can be instituted, preferred or made, on the day when the court is supposed to reopen. (Section 4 of the LI Act)

Limitation Period

Some precautions that can be taken by the bank:

1. Banks should as a rule, preserve all the relevant loan documents in a safe and secured place.

2. The documents should be under the dual control of authorized persons.
3. Banks should not allow any document to become time barred as per the LI Act.
4. Banks internal control and monitoring should be effective enough in the sense that the renewal of documents should be done well in advance.

6. Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“DRT Act”)

Important Highlights of the DRT Act are:

1. The act constitutes a Debt Recovery Tribunal for speedy recovery of loans mainly.
2. The act is applicable to any bank, financial institution or a consortium of them for the recovery of debt which is more than 10 Lakhs.
3. Applicable to the whole country except J&K.
4. Debt is used in a broad purpose, the following are some of its types:
 - Any liability inclusive of interest, it may be secured or unsecured;
 - Any liability which is to be paid under a decree, order of any civil court or any arbitration award or otherwise; and
 - Any liability payable under a mortgage and subsisting on and legally recoverable on the date of application.

There are a few judicial interpretations of the term ‘debt’ by different courts:

1. In **United Bank of India v. DRT (1999) 4 SCC 69**, the SC held that if the bank had alleged in the suit that an amount was due to it from the borrower or the respondent as the liability on the side of the respondent had grown during the course of their business activity and the same was still subsisting, it is sufficient enough to bring such amount within the scope of the definition of debt under the DRT act and is recoverable under the act.
2. In **Gv Films v. UTI (2000) 100 Compo Cases 257 (Mad) (HC)**, it is held that the payment made by the bank by a mistake is a debt.
3. In **Bank of India v. Vijay Ramniklak AIR 1997 Guj. 75**, it was held that if an Employee commits fraud and misappropriation. The amount

which is recoverable from him cannot be held under the purview of Debt under the DRT Act.

Debt Recovery Tribunals

The Debts Recovery Tribunal has been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The main feature of the DRT is to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. After the enforcement of SARFAESI Act in 2002, it also becomes an adjudicatory authority for that Act.

Now, The DRT now deals with both the SARFAESI act and the DRT act, the aim of both the acts is similar but the way is different. Appeals against orders passed by DRTs lie before Debts Recovery Appellate Tribunal ("DRAT"). DRTs can take cases from banks for disputed loans above Rs 10 Lakhs. In the present scenario, there are 33 DRTs and 5 DRATs functioning in the various parts of the country. In 2014, the government paved the way for six new DRTs to speed up loan related dispute settlement.

The civil courts are barred from handling any case which the DRT is handling, no court or authority has the power or jurisdiction to deal with any kind of recovery of debt which is above 10 lakhs (Jurisdiction of the DRT). The High court and Supreme Court have the jurisdiction under Art 226 and 227 of the Constitution.

Recovery Procedure

Banks have to file an application for the recovery of a loan taking into consideration the jurisdiction and cause of action. Other banks or financial institutions can also apply jointly. The application is filed with the required fees, documents and evidence. The LI Act is also applicable to the DRT cases, so the bank has to take proper care and file the application well within time. If the defendant has to appeal an order of the DRT, he has to first deposit the 75% or the prescribed amount as decided by the tribunal. Failure of payment would automatically mean a failure of filing application of appeal.

The tribunal also issues a recovery certificate to the applicant. Recovery officers attached to the tribunal have adequate powers for recovery under the act. On the receiving of the recovery certificate, the recovery officer has to proceed by attachment and eventual sale of a movable and immovable property. The defendant is not allowed to dispute the correctness of the amount given in the recovery certificate. Orders of the recovery officer are applicable within thirty days to the tribunal.

The extraordinary feature of the DRT is the overriding effect when there is an inconsistency with any other law or in any instrument by virtue of any other law for the time being in force.

In **Allahabad Bank v. Canara Bank, AIR 2000 SC 1535** it was held that DRT is said to be a special Act for recovery of the debt due to banks and financial institutions. DRT has overriding effect over the provisions of Companies Act, 1956, hence leave of the company court is not required even if the company is under winding up proceedings.

7. Lok Adalats under Legal Services Authority Act

Lok Adalats are organized under the Legal Services Authorities Act, 1987. They were developed to bring about a dispute settlement mechanism all over the country. Lok Adalats basically derive jurisdiction by consent or when the court is convinced that the dispute can be potentially settled at Lok Adalats. It is governed by the ideas of fair, equity and good conscience and various other legal principles. In case of a settlement, the award would be binding on the parties to the dispute. No appeal lies in any court against the award. Presently, Lok Adalats are typically organised between a dispute which is under the value of 20 Lakhs.

8. SARFAESI Act, 2002

The main objective of the act is to regulate securitization and reconstruction of financial assets and enforcement of security interest and for the matters connected to it.

Popularly known as the Securitization Act, The act basically empowers the banks and financial institutions to recover their dues in Non Performing Assets (NPAs) without the intervention of the Court. The act empowers the banks and financial institutions to issue notice for recovery from the borrowers and guarantors calling them to discharge their respective dues within 60 days.

In the case of non-compliance of the borrower or guarantor to repay the dues within 60 days' notice by the bank or the financial institution:

1. The bank can take possession or management of the secured assets of the borrower and can also transfer the same in the way of lease, assignment or sale for realizing the secured assets without the intervention of the court or the DRT.

2. The bank can appoint any person to manage the secured assets which have been taken over by the secured creditor (which is usually the bank)
3. Also instruct at any time by the way of a notice to the person as to:
 - Who holds the secured assets of the borrower
 - From whom any money due or becoming due to the borrower
 - To pay any kind of money to the secured creditor (which is usually the bank)

Important features and aspects of this Act include:

1. **Bank:** All the banking companies such as the Nationalised banks, the State Bank of India and its subsidiary banks, Regional Rural Banks, co-operative banks etc.
2. **Borrower:** (i) any person who has availed financial assistance from a bank and/or financial institution; (ii) any person who has given guarantee; (iii) any person who has created any mortgage or pledge as a security for the financial assistance granted by any bank or financial institution; and (iv) any person who becomes the borrower of a securitization company or reconstruction company, because the company has acquired any interest or right of any bank or financial institution, on account of financial assistance granted to a borrower.
3. **Central Registry:** The Register Office set up by the Central Government for the purpose of registration of all the transactions of asset securitization, reconstruction and transactions of the creation of security interests. The registration system will operate on a priority of registration basis, i.e., 'first come first served basis' the first person who registers gets priority over the persons who registers at a later date.
4. **Financial assistance:** Whenever any bank or financial institution allows a borrower – (i) to avail of a loan or advance (ii) makes subscription of debenture or bonds (iii) issues a letter of credit (iv) issues letter of credit (v) extends any other credit facility, it is called financial assistance.
5. **Financial Asset:** Financial asset means debt or receivables and includes: (a) any debt or receivable secured by mortgage of or charge in immovable property or (b) a claim to any debt or receivables or part thereof whether secured or unsecured or (c) any charges like a mortgage, hypothecation or pledge of movable property or (d) any right or interest in the security, whether full or part, securing debt (e) any beneficial interest in any movable or immovable property or in

debt, receivables whether is existing, future, accruing, conditional or contingent or (f) any other financial assistance.

6. **Hypothecation:** It is a charge in or upon any movable property (existing or future) created by a borrower in favour of a secured creditor.
7. Reconstruction company made for the sole purpose of asset reconstruction and registered under the Companies Act is called Reconstruction Company.

Three most important features of the Act are:

Securitization

In simple terms, Securitization is a process by which a company clubs its different financial assets or debts to form a consolidated financial instrument which is issued to investors. In return, the investors in such securities get interest. Simply, when you talk in the context of bad asset management, securitization is the process of conversion of existing less liquid assets into marketable securities. The securitization company takes custody of the underlying mortgaged assets of the borrower. It can initiate the following steps:

1. Acquisition of financial assets from any originator (which can be the bank);
2. Raise funds from qualified institutional buyers by an issue of security receipts (for raising money) for acquiring the financial assets; or
3. Raise funds in any prescribed manner; and
4. Acquisition of financial asset may be coupled with taking custody of the mortgaged land or building.

Asset Reconstruction

It is the activity of converting a bad or a non-performing asset into a performing asset. The process involves several steps including purchasing of a bad asset by a dedicated asset reconstruction company ("ARCs"). It includes the underlying hypothecated asset, financing of the bad asset conversion into good asset using bonds, debentures, securities and cash, the realization of returns from the hypothecated assets. Reconstruction is done within consonance with the RBI Regulations and the SARFAESI Act, which give us the following steps:

1. Taking over or changing the management of the business;
2. Sale or Lease a part or whole of the business of the borrower;
3. Rescheduling of payment of debts payable by the borrower;

4. Enforcement of security interest in accordance with this Act;
5. Settlement of dues payable by the borrower; and
6. Taking possession of secured assets in accordance with the provisions of the Act.

Enforcement of Security Interest

The Act empowers the bankers, when the borrower defaults, to issue a notice to the defaulting borrower and guarantor, calling to repay the debt within 60 days from the date of the notice. If the borrower fails to comply with the notice, the bank or the financial institution may enforce security interests (means the interest of the bank/creditor) by following the provisions of the Act:

1. Take possession of the security;
 2. Sale or lease or assign the right over the security;
 3. Appoint a manager to manage the security; and
 4. Ask any debtors of the borrower to pay any sum due to the borrower.
- If there are more than one secured creditors, the decision regarding the enforcement of SARFAESI provisions will be applicable only if 75% of them are agreeing.

Features of the SARFAESI Amendment Act in 2016

The government amended the SARFAESI Act in August 2016 to empower the ARCs (Asset Reconstruction Companies), to give a new life to Debt Recovery Tribunals (DRTs) and to increase the effectiveness of asset reconstruction under the new bankruptcy law. The amendment basically gives more regulatory powers to the RBI on the working of ARCs.

As per the amendment, the scope of the registry that contains the central database of all loans against properties given by all lenders has been widened to include more information.

RBI will now get more powers to audit and inspect ARCs and will get the freedom to remove the chairman or any director. It can also appoint central bank officials into the boards of ARCs. RBI will also get the power to impose penalties on ARCs when the latter doesn't follow the central bank's directives. Similarly, it can regulate the fees charged by ARCs from banks while dealing with NPAs. The penalty amount has been increased from Rs 5 lakh to Rs 1 crore. The amendment has brought hire purchase and financial lease under the coverage of the SARFAESI Act. Regarding DRTs, the amendment aims to speed

up the DRT procedures. Online procedures including electronic filing of recovery applications, documents and written statements will be initiated.

The defaulter has to deposit 50 per cent of the debt due before filing an appeal at a DRT. The amendments are important for DRTs as they can play an important role under the new Bankruptcy law. DRTs will be the backbone of the bankruptcy code and deal with all insolvency proceedings involving individuals.

9. Lenders Liability Act

On the basis of the recommendations of the working group on Lenders' Liability Laws constituted by the Government of India, RBI had finalised a set of codes of conduct known as 'the Fair Practice Code for Lenders' and advised banks to adopt the guidelines. All the banks went ahead and went to make their own versions of Fair Practice Codes as per the guidelines and started implementing them from 1st November 2013.

The most interesting features in the Lenders Liability Act are:

- Banks and financial institutions should give acknowledgement to all loan applications with a receipt. The loan applications should scrutinize all the applications within a reasonable period of time. Loan applications for the priority sector and advance amounting up to 2 Lakhs should be comprehensive.
- Lenders should ensure that the credit appraisal is properly done only after there has been an assessment of the creditworthiness of the applicants. Margin and security stipulation SHOULD NOT be a substitute for the due diligence on the creditworthiness or other important terms and conditions.
- The lender should inform the borrower the sanction of the credit limit that he can allow along with the terms and conditions. Further, he should keep the borrower's acceptance of the credit limits and terms and conditions on the record.
- Duly signed acceptance letter should form part of the collateral security.
- In the particular case of Consortium Advances, the participating lenders should make their own procedures to complete the appraisal of the proposal in a time-bound manner. Communicate their decision on financing or otherwise in a reasonable period of time.

- The lenders should make sure that timely disbursement of loans sanctioned in conformity with terms and conditions governing the sanction.
- Post disbursement supervision by lenders, with respect to loans up to 2 lakhs, should be constructive with a view taking care of any difficulty the borrower can face.
- The lender should release all securities on receiving payment or realization of the loan, subject to any conditions or right of lien or any other claims that a lender can have against the borrowers.
- Lenders should not interfere in the business or affairs of the borrower except what is allowed and agreed upon in the terms and conditions of the loan sanction documents. At the time of recovery of loans, lenders should not stoop down to a level of undue harassment towards the borrower.
- Apart from implementing the Fair Practices Code, banks should have a proper system for grievance redressal system.
- Bankers should also set up codes for Bankers' Fair Practices Code, Fair Practices Code for Credit Card Operations, Model Code for Collection of Dues and Repossession of Security etc. These codes are all voluntary based and can be implemented only if the bank wishes to set them up.

10. Banking Ombudsman

It is a grievance redressal system. The service is available for complaints against a bank's deficiency of service. A customer of the bank can submit a complaint against the deficiency in the services of the bank. If he does not get a satisfactory response from the bank, he can go ahead and approach the banking ombudsman for further action and investigation. Banking Ombudsman is typically appointed by the RBI under the Banking Ombudsman Scheme, 2006. RBI as per Section 35A of the BR Act, 1949 introduced the Banking Ombudsman Scheme with effect from 1995.

Important Features about the Banking Ombudsman Scheme:

- Banking Ombudsman is a senior official appointed by the RBI to redress customer complaints against certain deficiencies in certain banking services covered under the grounds of complaint specified under Clause 8 of the Banking Ombudsman Scheme 2006.
- All Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the scheme.

- Twenty Banking Ombudsman have been appointed with their offices located mostly in state capitals. The addresses and contact details of the Banking Ombudsman offices have been mentioned under Annex I of the Scheme.
- Some of the deficiency in the banking services (including internet banking):
 1. non-payment or inordinate delay in the payment or collection of cheques, drafts, bills etc.;
 2. non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;
 3. non-acceptance, without sufficient cause, of coins, tendered and for charging of commission in respect thereof;
 4. non-payment or delay in payment of inward remittances;
 5. failure to issue or delay in issue of drafts, pay orders or bankers' cheques;
 6. non-adherence to prescribed working hours;
 7. failure to provide or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
 8. delays, non-credit of proceeds to parties accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank;
 9. complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank-related matters;
 10. refusal to open deposit accounts without any valid reason for refusal;
 11. levying of charges without adequate prior notice to the customer;
 12. non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/Debit card operations or credit card operations;
 13. non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees);
 14. refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government;

15. refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
16. forced closure of deposit accounts without due notice or without sufficient reason;
17. refusal to close or delay in closing the accounts;
18. non-adherence to the fair practices code as adopted by the bank or non-adherence to the provisions of the Code of Bank's Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank;
19. non-observance of Reserve Bank guidelines on the engagement of recovery agents by banks; and
20. any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.

A customer can also make a complaint on the following groups if he feels there is a deficiency in the service with respect to loans and advances:

1. Non-observance of Reserve Bank Directives on interest rates; – delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan Applications;
2. Non-acceptance of application for loans without furnishing valid reasons to the applicant; and
3. Non-adherence to the provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be;
4. Non-observance of any other direction or instruction of the Reserve Bank as may be specified by the RBI for this purpose from time to time.

Other Important Provisions

There are no costs involved in filing complaints with the banking ombudsman. The banking ombudsman does not levy or charge any fee for filing and resolving customers' complaints.

The amount to be paid by the bank to the complainant in the form of compensation because of the loss suffered by the complainant is limited to the amount arising directly out of the act or omission of the bank or Rs 10 Lakhs, whichever is lower.

The Banking Ombudsman can award compensation not exceeding Rs 1 lakh to the complainant only in the case of complaints relating to credit card operations for mental agony and harassment. The Banking Ombudsman has to take into account the loss of the complainant's time, expenses incurred by the complainant, harassment and mental anguish suffered by the complainant while passing such award.

11. The Consumer Protection Act, 1986

The Act extends to the whole of India except J&K, it covers all goods and services except the ones which can be resold or for commercial purpose and services rendered free of charge and a contract of personal service.

Some of the features of this Act include:

- The complaint can be made by a consumer or any voluntary consumer association registered under the Companies Act, 1956 or under any law enacted by the Centre or State Govt. or one or more consumers, having the same interest in case of death of a consumer his/her legal heirs or representative.
- This act is made for speedy disposal of the redressal of consumer disputes.
- Consumer councils are mainly made to promote and protect the rights of the consumers. The central councils have the jurisdiction of the whole country, while the state council takes care of the whole state followed by a district council which has jurisdiction over the whole district.
- State Council is headed by the chairman of the council, who is the minister in charge of the Consumer Affairs in the State Government.
- The complaint of the consumers are dealt by the District, State and National Commissions. District and State are established by the State Governments and the National is established by the Central Government. There is a pecuniary jurisdiction of these commissions, cases up to 20 lakhs are dealt by the district forum. Above 20 lakhs and less than 1 crores are mainly handled by state commissions, plus the appeals against the orders of the district forum within the state. The cases exceeding 1 crores will be handled by the Central Commission. They also deal with appeals against the order of any State Commission.

- Complaints should be made in a prescribed manner with all the relevant details, evidences and applicable fee. Supporting affidavit is required. Admissibility of the complaint is to be decided within 21 days.

12. Bankers' Book Evidence Act, 1891

Basic Definitions coming out of the Act

The Act extends to the whole of India except J&K.

Banks are defined as –

1. Any company or corporation carrying on the business of banking;
2. Any partnership or individual to whose books, provisions of the act are made applicable; and
3. Any post office saving bank or money order office.

Bankers books include all books like ledgers, day book, cash book, and all the other records used in the ordinary business of a bank. The records can be maintained in any form such manual records, printed computer printouts, it can be in written form or stored in a film, magnetic tape or any other form of mechanical or electronic data. Such a record can be either on-site or at any off-site location including a back-up or disaster recovery site.

Court means the persons or person before whom a legal proceeding is held and the 'judge' is a judge of a high court.

Legal proceeding refers to different types of inquiries, proceedings and investigations. Legal proceedings mean (i) any proceeding or inquiry in which evidence is or may be given (ii) an arbitration (iii) any investigation or inquiry under the Code of Criminal Procedure, 1973, or under any other law as applicable for the collection of evidence, conducted by a police officer as well.

Some important aspects arising out of the Act

1. If the records are maintained in the written format, a copy of any entry along with a certificate certifying at the foot of such copy clearly indicating the following details:
2. It is a true copy of these entries;

3. The extract is taken from one of the ordinary books of the bank;
4. That this entry was made in the ordinary course of business;
5. Such type of record is still in the custody of the bank;
6. The copy was obtained by a mechanical or other process and a certificate is required for the authenticity of the information or data; and
7. All the certificates mentioned above should bear the date and should be signed by the principal accountant or manager of the bank with his name and official designation.
8. If the records are maintained online or in an electronic form (printouts, floppy discs, tapes, etc.) a copy of the printout and a certificate as mentioned above for the manual records.
9. If the records are maintained in mechanical form, (i) a printout of any entry in books of a bank stored in a mechanical or electronic form, it should also contain a certificate covering all aspects discussed for manual records.
10. Furthermore, in the case of the books of the bank are not handwritten then the copies in the form of printouts must accompany:
 - A certificate by the principal accountant or the manager stating that it is a printout of such entry or a copy of such printout.
 - Another certificate should be given by a person who is in charge of computer furnishing a brief description of the computer system and other details like (i) the safety features adopted by the bank to protect the data integrity; (ii) making sure there is no unauthorised entry in the system; (iii) checks and balance of system which verifies the authenticity of outputs and inputs; (iv) if the data is retrieved and transformed, details of such control system; (v) in case of a film or similar manner of the data stored: media form, the details of such storage and custody of storage including the kinds of system and practices which are adopted in this case.
 - Basically, the person who is in charge of the computer system should certify that the system is well and working. The system is also secure and accurate enough to store the data and records.

A certificate of any entry in a banker's book should in all legal proceedings be received prima facie evidence in the existence of such entry and should be admissible. On production of a certified copy, additional evidence would be required. Court has the power to order inspection of books of accounts.

13. Tax Laws applicable to Banking Operations

Like all the business, banks also have to ensure that they are compliant with the tax laws of the country. They should be aware of the different applicable provisions and laws (Finance Act, Income Tax Act) to deduct and pay all kinds of taxes including – Income Tax, Service Tax, Finance Tax etc. As an employer and the beneficiary of different services, banks have to adhere to the applicable tax provisions through which it is governed. Apart from all the role that it plays as an employer and beneficiary of different kind of services, Banks are expected to pay tax on the interest payable to the customers as per the directives of authorities like Tax Deducted at Source ("TDS") on interest that is payable on fixed deposits, NRO deposits, income on investments made by the bank and dealing in securities by banks etc.

Banks should take care of a series of things when it comes to tax laws that are applicable to them:

1. Collection of taxes and recovery is handled properly.
2. Deducted taxes should be paid within the prescribed limit to the concerned authorities. This is one of the crucial steps of compliance requirements. Non-compliance or wrong information can lead to legal action or penalty.
3. Banks are required to keep proper records of their tax collections and remittance.
4. Further, Banks are also required to report the details to the authorities within a specific time frame. The reporting requirements can include quarterly reporting, submission of half yearly or annual statements.
5. At the time of salary being given to the employees, banks should as a practice deduct applicable tax at the source and arrange to issue the certificate for TDS on Form 16 to employees. For deductions like payment to contractors, a similar form of TDS on Form 16A should be issued to service providers.
6. Form 16 and 16A (TDS Forms) should serve as evidence of tax deducted at source; as a record; and enable the employees and contractors to claim a refund of the tax.