LAW OF BANKING
HISTORY OF BANKING SYSTEM IN INDIA

The institution of Banking is of great importance and is playing a predominant role in the economy of every country in the world. The word ‘Banker’ is derived from the Latin word ‘Bancho’ or ‘Banque’ which means “a heap or mound”. Similary, it is derived from the German word ‘Bane’ or ‘Banco’ which means “joint stock fund”. A Banker is one, who carries on banking business. Therefore the world “BANK’ denotes any person/individual or firm or company, who/which transacts bqanking busihness”. In simple words, the word ‘Banking’ means “carrying on business with money”. No economy in this world can function and there can be no growth and development of the nation without proper system of banking.

The institution of banking was prevalent as early as 2000 B.C. inh India during Vedic period. In those days, merchants used to carry on business with people by accepting safe deposits and also to lend money to needy people. The Greek temples wered used as depositories for people’s surplus funds and were used as lending centers for lending at higher rates of interest against gold and silver, which had been left for safe custody. In india, during Vedic period, the ancient Hindu scriptures relate to the money lending transactions. Later, during the Smrity period, banking bsuness was carred on by the people of Vaish community by accepting deposits and granting advances. Durihng the Buddhist period, money lending business was well spread. Buddha and Mahavir considered money lending a sin and denounced it. During the3 Muslim period, money lending business in India was declined due to the strict Quoranic injunctions.

In England, the first modern bank known as “Bank of England” was established in the year 1694. The first modern bank known as “The Hindustna Bank” was established at Calcutta in 1770. The first Presidency bank was established in 1806 and it was changed as the Ban k of Bengal. Later the Presidency Bank of Bombay and the Presidency Bank of Madfras were estqablished in 1840 and 1843 respectively. These two banks were amalgamated into one bank, known as the “Imperial Bank of India”. The Imperial Bqank of India wqas nationalized in 1920 with change of its name as the State Bank of India, the largest bank in India at present, and is next to the Reserve Bank of India. By the end of 19th century, there were about none banks. In course of time, several banks have been established.

The Reserve Bank of India was established on Ist January 1935 under the Act called, The Reserve Bank of India Act, 1934 as the Central Bank of India. The Reserve Bank of India is playing a predominant role in regulating the banking business in India. The banking industry in India witnesses tremendous growth and development. 14 major commercial banks ijn 1969 and 6 commerical banks in 1982 were nationalized. The Government of India during the term of Shri P.V. Narsinmha Road in 1991 adopted privatization in trade, commerce and banking and as such number of private commercial banks viz. HDFC bank, Global Trust Bank Ltd, Hyderabad etc. have been established. With regard to the banking legislation in India the Joint Stock Companies Act, 1850 was the first legislative enactment and the first commercial bank established under this Act in 1901 was the Oudh Commerical Bank. After independence in 1947, the banking industry in India witnessed tremendous growth qand development the banking system, organizational problems and to control the credit created by the

commercial banks. The Act has been amended several times so as to meet the changing conditions and re1quirement in the banking industry.

DIFFERENT KINDS OF BANKS
AND
FINANCIAL ORGANISATIONS

There are various kinds of banks and financial organization which were playing predominant role in the economy of our country as detailed below:

1. Reserve Bank of India or Central Bank of India
2. Commercial Banks
   - (i) Cdommercial Banks under Public Sector
     - (a) State Bank of India and itrs subsidiaries
     - (b) Nationalised Banks and their subsidiary banks
   - (ii) Commercial Banks under Private Sector

3. Regional Rural Banks
4. Co-operative Banks
   - (i) State Co-operative Banks
   - (ii) Central District Co-operative Banks
   - (iii) Primary Credit Societies
5. Development Banks
   - (i) Industrial Development Banks
     - (a) Indstrial Development Bank of India
     - (b) Industrial Finance Corporation of India
     - (c) Statte Financial Coprópration
     - (d) Indistrial Credit and Investment Corporation of India Limited
   - (ii) Land Development Banks

   (State Level Land Development Banks and Primary Land Development Banks)

   - (iii) Agricultural Finance Corporation Ltd and
   - (iv) National Bank of Agriculture and Rural Development (NABARD)
   - (v) Exchange Banks.

RESERVE BANK OF INDIA
OR
CENTRAL BANK OF INDIA

The Reserve Bank of India is the central bank of our country. It was established as a body corporate under the Reserve Bank of India Act, 1934. It started functioning from April 1, 1935. It was first, a shareholders bank. It was nationalsed with effect from January 1, 1949. It took over the function of issuing currency from the governemt of dina, the power of credit control from the then Imperial Bank of India (State Bank of India at present). Its main functions are stated below :

- (i) It issues currency notes.
- (ii) It acts as Banker to the government.
- (iii) It acts as Banker to the banks and lends the banks as a last resort.
- (iv) It is a custodian of Foreign Exchange Reserves.
- (v) It controls/regulates the credit created by the commercial banks and

(vi) It acts as a clearmg house.

COMMERCIAL BANKS

The banks which perform all kinds of banking business and generally finance trade and commerce are called commercial banks. Since their deoposits are for a short period, these banks normally advance shorts term loans to the businessmen and traders and avoid medium term and long-term lending. However, recently, the commercial banks have also extended their areas of operation to medium term and long term finance. Majority of the commercial bank in India are in the public sector. But, there are certain private sector banks operating as Joint Stock Companies. Hence, the commercial banks are also called joint stock banks.

In simple words, commercial banks are those, which carry on banking business to earn profits. They borrow from the public by accepting different kinds of deposits at lower rates of interest and lend the same to the public by sanctioning loans and advances at higher rates of interest and thereby earn profits. The commercial banks may be classified into two categories namely –

(i) Commercial Banks under Public Sector and
(ii) Commercial Banks under Private Sector

(i) **Commercial Banks under Public Sector** : Commercial banks under the public sector are governed by the respective statuties. One such statute is the Banking Companies (Acqquistion and Transfer of Undertakings) Act, 1970. Thy include –

(a) State Bank of India and its subsidiaries viz. State Bank of Hyderabad and State Bank of Mysore etc., and
(b) Nationalised Banks (viz. Bank of India, Central Bank of India, Indian Bank, Canara Bank etc. etc.)

The Nationalized Banks are owned by the Government of India. The State Bank of India acts as an agent of the Reserve Bank of India, while the other Commercial Banks do not act as the agents of the State Bank of India. About 90% of the country's commercial bank system is now in the public sector.

(a) **State Bank of India** : The State Bank of India occupies a unique position in our banking system. It is the biggest commercial bank with very vast financial resources and the largest nmber of branches. It has 7 subsidiary banks Before 1920, the State Bank of India was known as Imperial Bank of India. In 1920, the Imperial Bank of India was nationalized with change of its name as the State Bank of India. Now, the State Bank of India is next to the Reserve Bank of India and acts as an agent of the Reserve Bank of India in the places where the RBI does not have an office or branch of the banking department. It has been conferred the status of the largest commercial bank of India. Its subsidiaries are the State Bank of Hyderabad, State Bank of Mysore, State Bank of Travancore, State Bank of Bikaner and Jaipur etc.

Management : The affairs of the SBI is managed by a Central Board of Directors consisting of 15 members :

(i) The Chariman and a Vice-Chariman are appointed by the Governement in consultation with RBI.
(ii) Two manging directors are appointed by the Central Board.
(iii) In the remaining 12 directors, 4 are elected by private shareholders, 4 directors are nominated by the Central Government in consultation with the RBI representing various economic interests.
(iv) The Central Government appoints one director and nominates one.
(v) The RBI nominates one director.

There is one ex-officio director. There are 14 Local Boards in the Country.

(b) **Nationalized Banks** : Where the ownership and management of banks is taken over by the state/government, it is called "Nationalisation of Banks" and the banks are known as "Nationalized banks". The overnment of India on July 19, 1969 nationlized 14 major commercial banks and 6 other banks on April 15, 1980. Later, the State Bank of India and its 7 subsidiaries were nationalized. Among the banking institutions in the organized sector, commercial banks are the oldest, having the wide network of branches commanding utmost public confidence. There are about 28 banks, which constitute the strong public sector in Indian commercial banking. The nationalized banks do not act as agents of the Reserve Bank of India.

(ii) Commerical Banks under Private Sector : Apart from the commercial banks under the public sector, there are commercial banks under private sector, both Indian and Foreign banks, which are playing role in the economy of our country.

At present (March 31 2006) there are 220 scheudled commercial banks in India. Of these 28 are public sector banks, 133 are Regional Rural Bank, 29 Foreign Banks and 29 Private Banks. The structure of commercial banking in India is shown in the following chart.

STRUCTURE OF COMMERCIAL BANKING IN IDNA
(MARCH 31 2006)

Reserve Bank of India (Central Bank)
Schedule Commercial Banks in India

Public Sector Banks)27+1)	Priate Sector (29)	Foreign Banks (29)	Regional Rural Banks (133)

State Bank of India & its	Nationalised Banks Banks (19)	Old Private Banks (20)	New Priate Banks (9)

Subsidiaries (8)

In addition to the above, 52 Urban Co-operative Banks and 16 State Co-operative Banks are also scheduled banks.

Role of Commercial Banks in a Developing Economy : A well organized and well developed banking system is a prerequisite for the economic development of any country. Commercial Banks in our country are playing significant role in the economy of our country. Commercial Banks mobilize financial resources from the saving public and provide them for industrial growth. In the process they can also influence the direction in which these resources are utilized. Banks are regarded as development agencies. In underdeveloped countries, banking facilities are limited. They are confied to specific areas and regions. They provide credit facilities to some sectors only. In India before nationlisation of maor banks in 1969. Banks neglected agriculture and small industry. Changes in the structure and functions are necessary to enable banks to perform development role in these economies.

In a modern economy, banks provide a variety of functions and services which are conducive to growth. They do much more than deposit banking. They undertake several financial services and introduce new instruments. They encourage entreprenures and also undertake entrepreneurial unction They also undertake social responsiblitlies. They are th agents necewsary for economic development . Banks play an important role in the development of a country. It is the growth of commercial banking in the 18th centuries that facilitated the occurrence of industrial revolution in Europe. Similarly, the economic progress in the present day developing economies largely depends upon the growth of sound banking system in these economies.

REGIONAL RURAL BANKS

In 1970, the Government of India announced 20 Point Economic Programme. One of the significant features of the programme was the liquidation of the rural indebtedness. Consquently, the Government of India thought it necessary to established rural banks as subsidiaries of the public sector banks to Charmnaship of Mr. M. Narasimham recommended on July 30, 1975 the establishement of

RRBs. The first 5 RRBs were set up on October 2, 1975 by an Ordinance (which was replaced by the Regional Rural Banks Act of 1976).

The commercial banks are basically urgan oriented and unable to provide credit at cheaper rates to the weaker sections of the rural people. In order to provide credit at cheaper rates and to protect the interests of the weaker sections of the rural population the Regional Rural Banks came into existence in 1975. The Regional Rural Banks are relatively new banking institution which were added to the Indian banking scene since October 1975.

A Rural Bank carries on the normal business of banking as defined in Section 5(b) of the Banking Regulation Act, 1949. It generally undertakes are business of granting loans and advances to small and marginal farmers and agricultueral peasants, who may be individuals or groups and to co-operative societies which include marketing societies, agricultural processing societies, co-operative farming societies, for agricultural purpose or agricultural operations or for other relevant or allied purposes, and to artsances small entrepreneurs and persons of small means, engaged in trade, commerce or industry or other productive activities within the notified area of the concerned Rural Bank.

Objectives and Functions : The RRBs perform the following functions :

(i) They provide credit facilities to the agricultural sector with particular emphasis on small and marginal farmers and agricultural labourers.
(ii) They promote the welfare of economically and socially backward sections of the population.
(iii) They help the rural artisans and small entrepreneurs in rural areas by providing credit facilities.
(iv) Alongwith the agriculture, they are expected to help small business units and self employment schemes and thereby promote the alround development of village societies.
(v) They mobilize deposits of rural people.
(vi) They provide subsidiary services like commercial bank.

CO-OPERATIVE BANKS

Cooperation means voluntary association on the basis of equality and for some common purpose. The basic principle of cooperation is each for all and all for each'. In the words of H. Calvert, Cooperation then is from of organization wherein persons voluatarily associate together as human beings on the basis of equality for the promotion of their economic interest. Cooperative bank is institution established on the cooperative basis and dealing in ordinary banking business. Like other banks, the cooperative banks are funded by collecting funds through shares, deposits etc.

The co-operative banks are established under the Co-operative Societies Acts of the states concerned. The co-operative banks are basically rural oriented and function on the principles/ideas of co-operation. They have three tier set-up and sub-divided as follows –

(i) State Co-operative Banks.
(ii) Central/Distric Co-operative Banks at District Level and
(iii) Primary Credit Societies at village level.

(i) **State Co-operative Banks** : State cooperative banks are the apex institutions in the three tier cooperative credit structure, operating at the state level. Every state has a state cooperative bank. State cooperative banks occupy a unique position in the cooperative credit structure.

(ii) **Central/District Co**-operative Banks at District Level : Central cooperative banks are in the middle of the three tier cooperative credit structure Central cooperative banks are of two types : (a) There can be cooperative banking unions whose membership is open only to cooperative societies. Such cooperative banking unions exist in Haryana, Punjab, Rajasthan, Orissa, and Kerala, (b) There can be mixed central cooperative banks whose membership is open to both individuals and cooperative societies.

(iii) **Primary Credit Societies at village level** : Primary agricultural credit society forms the base in the three tier cooperative credit structure. It is a village level institution which dirfectly deals with the rural people. It encourages savings among the agriculturists, accepts deposits from the, gives loans to the needy borrowers and collects repayments.

The co-operative banks also perform the basic functions of banking and differ from the commercial banks as follows :

(a) The commercial banks are established under the central enactment viz, the Companies Act, 1956 or a separate Act passed by the Parliament, while the co-operative banks are established under the Co-operative Socieities Acts of the States concerned.

(b) The co-operative banks have three tier set-up as stated above, while the commercial banks are organized on unitary basis.

(c) Only the State Co-operative banks have access to the Reserve Bank of India, whereas every commercial banks which is a scheduled bank is entitled to avail of the refinance facilities from the Reserve Bank of India.

(d) The co-operative banks function within a limited area/jurisdiction only viz, particular state or distruct or to a local area (in case of a society)., whereas the jurisdiction of commercial banks extends to other district, states and also other counties.

(e) The Reserve Bank of India has full / complete contral over the commercial banks, whereas its control over co-operative banks is partial.

(f) Co-operative banks function on the principles/ideals of co-operation, while the commercial banks function on sound business principles and profit motive.

DEVELOPMENT BANKS

The banks, which aim to promote trade, commerce and finance and to develop the economy of our country may be divided into two categories namely :

(i) Industrial Development Banks, and

(ii) Land Development Banks.

(i) Industrial Development Banks : Industrial sector is palying vital role in the economy of any nation and hence the government takes all necessary steps by providing financial assistance through financial orgaisations for industrial development. Industrial banks, also known as investment banks, mainly meet the medium-term and long-term financial needs of the

industries. Such long-term needs cannot be met by the commercial banks which generally deal with short-term lending. The main functions of the industrial banks are : (a) They accept long-term deposits (b) They grant long-term loans to the industrialists to enable them to purchase land, construct factory bulding, purchase heavy machinery etc. (c) They help selling or evenwrite the debentures and shares of industrial firms. (d) They can also provide information regarding the general economic position of the economy.

Following are some of the notable institutions/organization of industrial finance –
(a) Industrial Development Bank of India.
(b) Industrial Finance Corporation and
(c) State Financial Corporation and
(d) Industrial Credit and Investment Corporation of India Limited.

(a) **Industrial Development Bank of India :** The Industrial Development Bank of India is the apex bank, which provides industial finance. It was established in July 1964 as a wholly owned subsidiary bank of the Reserve Bank of Inda. On 16th February 1976 it was delinked from the Reserve Bank of India and its entire Share capital was transferred to the Central Government. Consequently, its role has been enlarged and has been conferred the status of principal financial organization for coordinating the functions and activities of all India term lending institutions and also to some banks under the public sector. The IDBI provides direct finance to the large scale and medium industries. It also extends indirect financial assistance to the other industrial establishments as stated below :

(i) The IDBI refinances the industrial loans sanctioned by the State Financial Corporations, State Industrial Development Corporations, Commercial Banks, Co-opertive Banks, Regional Rural Banks etc.
(ii) It provides financial assistance by re-discounting of bills and
(iii) It provides seed capital assistance ganted to new entrepreneurs through the State Financial Corporation, State Industrial Development Corporations etc.

(b) **Industrial Finance Corporation of India :** The Industrial Finance Corporatin of India is the first Industrial Development Bank in India. It was estagblished in the year 1948 with the main objective to provide finance to the newly established industries for the purpose of accommodation and fixed assets. It has been contributed 50% by the Industrial Development Bank of India and 50% by the Scheduled Banks. It raises its resources by issing bonds in the market, borrowing from Indistrial Development Bank of India, Central Governemt and other financial institutions and foreign credits.

(c) **State Financial Corporation :** The Indistrial Finance Coproration provides financial assistance to large public limited companies and cooperative societies and does not cover the small and medium sized industries. In order to meet the varied financial needs of small and medium sized industries, the Government of India passed the State Finance Corporations Act in 1951, which empowers the State governments to establish such Corporations in their states.

Functions : The functions of the State Financial Corporations are summarized below:

(i) The SFCs have been established to provide long-term finqance to small scale and medium sized industrial concerns organized as public or private companies, corporations, partnership or proprietary concerns.
(ii) The SFCs extemd ;pams amd advamces to the industrial concerns repayable within a period of 20 years.
(iii) The SFCs guarantee loans raised by the industrial concerns in the market or from scheduled or cooperative banks and repayable within 20 years.
(iv)The SFCs subscribe to the debentures of the industrial concerns repayable within a period of 20 years.
(v) The SFCs guarantee laons raised by the industrial concerns from scheduled or cooperative banks and repayable within 20 years.
(vi)The SFCs underwrite the issue of stocks, shares, bonds and debentures by industrial concerns.

(d) **Industrial Credit and Investment Corporation of India Limited :** The Industrial Credit and Investment Corporation of India Limited was established as a Joint Stock Company in 1955. Its main objective was to chancellise the funds market in the country. Its entire share capital was held by commercial banks, insurance companies which were then in the private sector and were not nationalized, and individuals.

(ii) **Land Development Banks :** (State Level Land Development Banks and Primary Land Development Banks) : The Land Developments Banks are the co-operative societies/institutions, which provide long term credit facilities in the agricultural sector. The main objective behind the establishment of the Land agricultural sector. The main objective behind the establishment of the Land Development Banks is agricultural development. The structure of these banks is two tier i.e. i). State Level Land Development Banks and ii) Primary Land Development Banks The central land development banks are located at state level, while the prirmary land development banks are located at the district and taluka level guaranted by the State Governments and subscribed by the Central and State Governments.
(iii) **Agricultureal Finance Corportions Ltd. :** It was set up as a Joint Stock Company in 1968 by the Indian Banks Associaation. Its main object is to help the commercial banks in finaicing the agricultural projects. There are about 17 banks, which inducle the State Bank of India and other nationalized baks are the share holders of this corporation. It is now functioning as a Rural Development Consultancy Organization. It has built up expertise in this field and is engaged in the formulation of projects and development plans at the instance of member banks, State Governments and the Central Government.

(iv)National Bank for Agruculture and Rural Development (NABARD) : With the increasing role of Institutional credit in the integrated rural development of the country, it was felt necessary for a single broad based organization which would not only extend adequate financial assistance to the various credit institutions of the rural areas but also provide guidance in all the mattes concerning the formulation and implementation of rural

developments programmes. So far all such functions have been performed by the Reserve Bank of India and the Agriculural Refinance and Development Corporation (ARDC). In 1981, the Committee to Review Arrangment for Institutional Credit for Agriculture and Rural Development (CRAFICARD), set up by the Reserve Bank of India, recommended the establishment of the National Bank for Agriculutre and Rural Development (NABARD). The recommendation was approved by the government and consequently NABARD came into existence on Jully 12, 1982 (NABARD) is the apex development bank for agriculture and rural development. It was established on July 12, 1982 by merging the Agricultural Credit Department and Rural Planning and Credit Cell of the Reserve Bank of India, and the entire undertaking of Agricultural Refinance and Development Corporation.

The functions of the NABARD are three tier, namely –

(a) The credit functions
(b) The development functions, and
(c) The regulation functions.

(v) Exchange Banks : Exchange Banks are those banks which deal with foreign exchange and have specialized in financing foreign trade. These banks are foreign banks and have their head offices located outside the country. Although the main business of these banks is financing of foreign trade, they also perform normal commercial banking functions and thus compete with local commercial banks.

The main functions of exchange banks is to finance foreign trade. There aree two aspects of finaincing foreign trade (a) financing exports, and (b) financing imports.

BANKER : MEANING AND DEFINITION

The expression Banking in the simple sense means carrying on business with money. The term Bank denotes any peron or firm or company, which transacts banking business. A bank is an institution which deals with money and credit. It accepts deposits from the public, makes the funds available to those who need them, and helps in the remittance of money fromj one place to another.

There is no satisfactory definition, sincd it is very difficult to define the term Banking or Banker. However, many attempts were made to define the term. Following are some of the prominent definitions :

(i) **General Definition :** “A bank is what a bank does”. It implies that the nature of a bank can be better understood by studying the functions performed by a bank. Among all definition, this definition is the simplest.
(ii) Negotiable Instruments Act, 1881 : According to section 3 of the Negotiable Instruments Act 1881. Banker includes a person, corporation or company y acting as a banker”. This definition is not satisfactory.

(iii) **The Banking Regulation Act 1949** : Section 5 (b) of the Act defines the term Banking as "accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, ordr or otherwise".

Ingredients or constituents of the definition :

(a) The very purpose of the acceptance of the deposists is for the purpose lf lending or investment.
(b) The acceptance of deposits is from the publc.
(c) These deposits can be withdrawable through cheques, drafts, orders or otherwise.

This definition covers the most important functions viz. the borrowing)acceptance of deposits of money from the public) and lending (sanction/payment of loans and advances to the public viz. individuals, traders, industrialists etc.) and hence it is regarded workable and is accepted.

CUSTOMER : MEANING AND DEFINITION

The expression 'Customer' in the simple sense means, one who transacts himself with the bank subject to certain terms and conditions as imposed by the Banker. In other words, a person, who maintains an account with the bank may be regarded as customer.

The term 'customer of a bank' has not been defined in the Banking Regulation Act, 1949 or any other Act. By the term it is generally understood or mean an account holder of bank. But this generall understanding of the term has been qualified by banking experts and judgements of law courts. Hence, there is no satisfactory definition for the term 'customer'. However, some attempts were made to define the term 'customer' as stated below : -

(i) **Sir John Paget :** Sir John Paget defines 'Customer' as "To constitute a customer, there must be some reasonable course or habit of dealing in the nature of regular banking business'. According to him, mere opening an account with bank would not confer the status of customer. There must be a regular course of dealing with the bank, to be designated as a customer. However, this view was subject to criticism on the ground that, this definition puts emphasis on duration of dealing with a bank as an account holder. It is not correct to say that there must be regular course of dealing with Banker.

(ii) **Dr. Hart's Definition** : According to Dr. Hart, "a customer is one, who has an account with a banker or for whom a banker habitually undertakes to act as bank". According to him, a single transation is sufficient to constitute a customer. Therefore, to constitute customer, the following two conditions are to be satisfied :

(a) He must open an account with the Bank to have a dealing with the Bank,
(b) The nature of such dealing must be a form of a banking trasaction.

The Kerala High Court in "Central Bank of India Ltd. Bombay vs – Gopinathan Nair & others, AIR 1979 Ker. 74 has laid down :

"Broadly speaking, a customer is a person who has the habit of resortint to the same place or person to do business. So far as banking transactions are concerned he is a person whose money has been accepted on the footing that the banker will honour upto the amount standin to his credit, irrespective of his connection being of short or long standing".

In this very sense the statement in the question has been made that "to constitute a customer there must be some recognizable course or habit of dealing in the nature a regular banking business'.

RELATION BGETWEEN BANKER AND CUSTOMER

The institutin of Banking has great significance and is playing a predominant role in the economy of every country in the world. There are various banks with variety of functions, commercial or otherwise. Commercial Banks are those which carry on banking business to earn profits. They borrow from the public in the form of various deposits at lower rates of interest and lend the same to the publc, traders and Industrialists etc, at higher rates of interest and thereby earn profts. The relationship between the banker and customer can be studied with reference to the following heads –

(A) General Relationship
- (i) Debtor and Creditor
- (ii) Agent and Principal.

(B) Special Relationship or Banker's Rights
- (i) Rights of Lien
- (ii) Rights of Set-off and
- (iii) Right of Appropriation of Payments or Rule in Clayton's case.
- (iv) Banker's right to claim incidental charges.
- (v) Banker's right to charge interest.

(C) Obligatins of the Banker
- (i) Obligation to honour cheques and liability for wrongful dishonor.
- (ii) Vicarious liability of a Banker for the fraud committed by his servants
- (iii) Garmishee Order.
- (iv) Duty not to close customer 's account without his consent.

GENERAL RELATIONSHIP

The relationship between Banker and Customer in generall (General Relationship) may be explained with reference to the following heads :

1. Debtor and Creditor Relationship.
2. Trustee and Beneficiary Relationship and
3. Agent and Principal Relationship.

DEBTOR AND CREDITOR RELATIONSHIP

According to Sir John Paget, the generall relationship between banker and customer is primarily that of a debtor and a creditor. The relationship is purely contractual since both of tham will have rights and obligations against each other. The primary function of a Banker is to borrow money from the public (customers) by way of different kinds of deposits. Banker assumes the position of a debor by accepting such deposits. Banker's position as debtor continous so long as the customer

maintains credit balance. The Banker, like a debor, is under an obligation to repay (as and when or on expiry of a stipulated period in case of RD/FD accounts) the customer on demand. When the Banker allows/permits his customer to overdraw, the position is reversed (i.e. in case of overdraft, the banker becomes creditor). The other primary function of banker is lending. The banker llends his customers, by allowing O.D. (Overdraft5(, Cash Credits, Loans etc. Then, the Banker remains as creditor till the customer clears of his loan. The Law of Limition is also applicable to the Banker and Customer in respect of their positons as the debtor and the creditor. The limitation period is three years.

According to Art. 22 of the Limitation Act, 1963 the period of limitation to the deposit is three years which starts from the date of demand by the customer and not from the darte of deposit. So in case of Banker's debt, the period of limitation (three years) beings from the date od demand and for a fixed deposit, it applies only from the date of maturity. But, in case of ordinary commercial debts the period of limitation starts from the date of the debt. So this is also a peculiar feature of banker and customer relationship.

In case of an ordinary commercial debt, the debtor repays on a specified date as per terms of the contract. But, in case of a deposit with the Banker, the debtor (Banker) need not repay on his own accord, until and unless the amount is demanded. The relevant case on this point as –

Joachinson vs. Swiss Banking Corporation. (1921 3 K.B. 110) " It was held in this case that a banker's debt (deposit by customer) is not to be repayable without previous demand.

Further, customers position is that of an unsecured creditor since he has no charge over the asets of the bank. However, the banker as creditor when a loan was sanctioned) exercises charge over the assets of the customer.

Velji La\kshmsey & Co. Banaji & Co., (19545) 25 COMP. CAS 395 : In this case the Bombay High Court held that the customer, depositor/creditor cannot be treated as preferential creditor in case, the bank is wound up.

The relationship between banker and customer has been defined as that of debtor and creditor is on the basis of the decision given in the leading case of Foley vs. HiII, (1948) 2 H.L.C 28.

Bhashyam and Adiga's Negotiable Instruments Act states _ The relationship of a banker and customer is that of a creditor and debtor with the superadded obligation of honouring customer's creders on the funds in his hands.

Lord Brougham said – This trade of a banker is to receive money and use it as if it were his own he becoming debtor to the person who has lent or deposited\ with him the money to use as his own. In this connection the banker is not an agent, or factor, but he is debtor.

Therefore, it is to be noted that the following points are to be borne in mind with regard to the Banker and customer as that of the debtor and creditor –

(i) The banker who accepts deposits is a debtor and the customer, who deposits is a creditor. In respect of loans and advances sanctioned by a bank, the position is vice versa.
(ii) The banker as a debtor does not approach the customer (creditor), but the customer (as a creditopr) on the other hand approaches the banker (debtor) to deposit his money with the banker and hence, the banker is called "privileged debtor".
(iii) The customer as creditor does not insist on the debtor banker, any securitriesor sureties at the time of depositing the money with the banker.

TRUSTEE AND BENEFICIARY RELATIONSHIP

The functions of bankers are broadly classified under three heads namely :

(i) Primary functions i.e. borrowing and lending (refere creditor and debtor relationship).
(ii) Subsidiary functions, which includes agency services by banker (refer relationsip of Principal and Agent); and
(iii) General utility services (maintainence of safe deposit vaults) : It refers the banker's position as a trustee.

A trustee is a person, who holds money or certain property and performs certain functions for the benefit of some other person called "Beneficiary" E.G. A transfers certain property to B upon a trust for the benefit of C. Here, A is called "Settler of Trust Owner" B is called "Trustee" and C is called "Beneficiary". Generally, a banker is a debtor of his customer in respect of deposits made by the customer, but in certain circumstances he acts as trustee also. Many banks have separate departments for discharging the trusteeship functions and such banks are named as the Trustee when trusts are created. Similarly, banker maintains safe deposit vaults etc., for the benefit of his customers. When the customer deposits securities or other valuables with the banker for safe custody, the banker is said to be a trustee.

AGENT AND PRINCIPAL RELATIONSHIP

When a person appoints to act on his behalf with a third party, it is called "Agency". The person who appoints is called 'Princiapl'. The other person, who is appointed is called 'Agent'. The contract between them (i.e. Principal and Agent) is called 'Contract of Agency'. Agency is the legal relationship between an agent and Principal, bring the principal into legal relationship with the third party, Example – 'A' appoints 'B' to purchase some property on his behalf. Here 'A' is principal and 'B' is Agent. The relationship between 'A' and 'B' is called Agency.

When a banker buys or sells securities on behalf of his customer, he performs an agency function. Similarly, when he collects theeques, dividends, bills or promissory notes on his customer's behalf, he acts as his agent. Besides, he may also act in various other agency capacities, for example, as a trustee, attorney, executor, correspondent or a representative.

A banker acts as an agent of his customer by rendering variety of agency services. Under the standing instructions of his customer, he purchases and sells assets and securities on behalf of his customer. He collects cheques, discounts bills of

exchange, pays telephone/electricity bills. His agency services between exporter and importer contribute a lot for the promotion of foreign trade.

SPECIAL RELATIONSHIP
OR
BANKER'S RIGHTS

The special relationship between banker and customer refer to certain rights of the banker as stated below –

1. Rights of Lien
2. Right of Set-off and
3. Right of Appropriation of Payments or the Rule in Clayton's case.
4. Banker's right to claim incidental charges.
5. Banker's right to charge interest.

RIGHT OF LIEN OR BANKER'S LIEN
(RIGHT GENERAL LIEN)
RIGHT OF LIEN

Lien : Meaning : Banker's right of lien is an important special feature of banker customer relationship. The term 'lien' means "the right of a creditor to retain in his possession the goods and securities owned by the debtor until the debt has been discharged, but not the right to sell". In simple, lien means right to retain the goods or securities till the debt is cleared.

Kinds of Lien : Banker's right of lien is an important special feature of banker customer relationship. The term 'lien' means "the right of a creditor to retain in his possession the goods and securities owned by the debtor until the debt has been discharged, but not the right to sell". In simple, lien means right to retain the goods or securities till the debt is cleared.

Kinds of Lien : Lien is of two kinds namely –

1. Particular or Special Lien; and
2. General Lien

1. **Particular** Lien : A particular lien gives the right to retain possession only of goods in respect of which the charges or dues have arisen. Eng. – A tailor's right to retain the clothes till the stiching charges are paid.
2. **General Lien :** A General Lien is one, which gives right to retain possession until the whole balance of the account is paid. It extends not only towards goods pledged as security but also in respect of others. A Banker exercises/possesses the right of 'General Lien'.

Banker's Right of General Lien : It confers on Banker (as a creditor) right to retain the goods and other securities owned by the debtor until the debt due from him, is repaid. For instance, when a bank sanctions loan to a customer against a particular security. At the time of repayment/to clear off the loan, the security/pledged/mortgaged is not sufficient to meet the liability, the banker may proceed (exersice lien) against other secirotoes (moveable or immovable) pertaining to the customer (debtor). Whe4e as a particular lien confers right over a particular debt only. The generall lien is applicable to all debts due from debtor to the creditor.

Section 171 of the Indian Contract Act, 1872 confers on Banker, the right of general lien. The banker can exercise his right of lien on all goods and securities entrusted to him in the capacity as a banker. The Banker cannot exercise his right of lien in respect of :

(i) the goods and securities entrusted to him as a trustee or an agent; and
(ii) the goods and securities entrusted to him for some specific purpose.

Banker's line : An Implied Pledge : If goods are delivered as security by one person to another, it is called 'Pledge'. Eg. – If a farmer delivers 100 bags of paddy or wheat for securing a loan from the bank, it is called 'Pledge'. The former is pledger and the banker is pledge. In pledge, the pledges (creditor) can exercise the rigtht of sale. With the right of lien, the banker can sell the goods and securities in case of default by the customer. However, he cannot sell the title deeds of an immovable property.

Therefore, the Delhi High Court in Vijay Kumar vs. Jullunder Body Builders & Others, (1983) 54 COMP, CAS 125 the banker's lien has judicially been defined as an Implied Pledge.

Exceptions to the General lien : The Banker cannot exercise the right of generall lien in the following cases :

(i) Safe custody deposits : When the customer deposits with the banker, valuables, securities, documents, etc. for safe custody, the right of General Lien cannot be exercised over them.
(ii) Documents deposited for Special Purpose.
(iii) When the customer, negligently or mistakenly left the securities with the banker.
(iv) When the right of general lien becomes particular lien.

RIGHT OF SET –OFF
(BANKER'S RIGHT TO SET-OFF : COMBINING OF ACCOUNTS)

The expression 'Set-off' means "Combining two accounts of the same customer". It is a mutual adjustment/arrangement between the banker (as creditor) and customer (as debtor) in respect of payments due to the creditor. Set off may aptly be described as the right of a Banker to appropriate the credit balance in one account in order to arrive at the net sum due. It is a statutory right, which a banker is entitled to exercise in order to combins two accounts in the name of the same customer to recover the debts due by the customer (debtor). The banker adjusts the debit balance in one account with the credit balance in one account with the credit balance in another account. For instance, one of his customer's accounts shown debit baqlance i.e. overdraft of Rs. 10,000/- and another account shows a credit balance of Rs. 5,000/-. Then, the banker can adjust the credit balance of RS. 5,000/- against the debit balance by combining the two accounts and can claim the remaining amount of Rs. 5,000/- only from the customer.

Conditions : The banker can exercise the right of set-off subject to the following conditions :

(i) The accounts must be in the same name of the customer and in the same right/capacity.
(ii) The right is a respect of debts due only : not in respect of future debts.
(iii) The amount of debts must be certain and undisputed.
(iv) There should not be any agreement express or implied to the contrary.
(v) The right cannot be exercised after the Garnishee Order passed by the court.

Automatic Right of Set-off : Banker's right to set-off arises automatically under the following circumstances –

(i) On the death, insanity or insolvency of the customer.
(ii) On the insolvency of the partner of the firm or on the winding up of a company.
(iii) On the receipt Garnishee Order.
(iv) On receiving notice of assignment of a customer's credit balance, and
(v) On receiving notice of second mortgage over the security charged to the banker.

It is generally believed that a banker couold combine his customer's accounts unless there is an agreement contrary to that effect. This view was laid down, basing on the decision in –

Garnett vs. Mc. Kervan (1872) 27 LT 560 : In the case, the plaintiff had a dormant overdraft with one branch of a bank and a few years after he had stopped business with the branch, he opened a new account with another branch of the same bank, where his credit balance just exceeded the amount of the dormant debit balanc e referred to above. The amount required for the clearing of the overdraft with the first branch was transferred from his account with the second branch, which led to the dishonour of the customer's cheques drawn against his credit balance. The court's disicion was in favour of the bank, as it was held that there was no special contract or usage proved to keep the accounts separate and that, while it might be proper and considerable to give notice to a customer of intention to combine accounts, there was no legal obligation on a bank to do so arising either from the express contract of course of dealings.

Halesowen Presswork & Assemblies Ltd v. Westiminster Bank Ltd (1970 All E.R. 33) : In this case, the court held that the bank is not entitled to combine two accounts if there was an arrangement with its customer at the time of opening the accounts to keep the accounts separately for a period unless the Bank had given notice to determine the arrangement by reason of special circumstances, the Bank having taken no steps to determine.

RIGHT OF APPROPRIATION OF PAYMENTS
(THE RULE IN CLAYTON'S CASE)

Meaning : The expression 'Appropriation of payments' means" adjustring the payement towards the debts". When a debtor owes several distinct debts to a creditor,

and makes a payment not sufficient to clear/discharge all the debts, the question, that arises is : against which debt/debts the payment is to be adjusted/approprisated ? Similarly, when the customer takes more than one loan, he owes to the banker different debts. Later, the customer takes more than one loan, he owes to the banker different debts. Later, the customer may make payment, which is not adequate to clear all such distinct debts. Here, also the question of appropriation arises.

To answer this questions, four rules were laid down in the Clayton's case. Hence, it came to be known as "The Rule in Clayton's Case". These rules are embodied in Sections 59 to 61 of the Indian Contract Act, 1872, as follows :

(i) When the debtor intimates, against what debt/debts (in full or in part) the payment is to be appropriated/adjusted, the creditor has to adjust/appropriate accordingly (Sec. 59).
(ii) When the debtor (while making payment) does not indicate as to appropriation, the circumstance so implies that the payment is to be appropriated against a particular debt (impled appropriation). Eg. The paym,ent may imply appropriation towards a debt which is about to be barred by limitation period.
(iii) When the debtor does not indicate as to appropriation, the creditor has a discretion to appropriate the payment against any debt including time barred, but not disputed one (Sec. 60).
(iv) Where neither of the parties appropriates, the payment shall be applied to discharge the debts including time barred ones in chronological order i.e. in order of time. If the debts are of equal standing, the payment shall be appropriated proportionately.

Question may arise whether the payment made by the debtor is to be adjusted first towards the interest or the principal in the absence of agreement to that effect ?
IN M/s Kharavela Industries Pvt. Ltd. vs. Orissa State Financial Corporation & other : It was held that in the case of a debt due with interest, any payment made by the debtor should be adjusted first towards satisfaction of interest and thereafter towards the principal unless there is an agreement, to the contrary.

The Rule in Clayton's Case : The rule in Clayton's case is of great importance to the Bankers. The above four rules were laid down in the case of Devaynes Vs. Noble (1816) 1 Meriavale 530, 535 (popularly known as 'Clayton's Case). Hence, the above rules as to the appropriation of payment, came to be known as "The Rule in Clayton's Case".

Facts of the case : A firm of Bankers Devaynes, Daives, Noble & Co. had five parners. Devaynes, a senior partner died. The surviving partners continued the business. After one year, the firm became bankrupt and the creditors (customer) continued to deal with the firm even after the death of Devaynes. Clayton had a credit balance on the death of partner. Later, he withdrew in excess of the balance and also paid in, so as to arrive at credit balance. Mr. Clayton claimed that the payments in, should be appropriated against the withdrawals so as to leave the credit balance inact at the time of partner's death. The court rejected his contention and denied the claim and laid down the above rules.

Thus, in case of death, retirement or insolvency of a partner, the existing debt (due from the firm) is adjusted by making subsequent credit made in the account.

Then the banker has no right to claim such debt from the assets of the deceased/retired partner.

BANKER'S RIGTH TO CLAIM INCIDENTAL CHARGES

Every customer is expected/supposed to maintain a minimum balance with his account. If he fails to do so, the banker may impose/collect certain incidental charges for the purpose. Similarly, the banker may collect charges for issuing the statement of account of the customer's account.

BANKER'S RIGHT TO CHARGE INTEREST

If the banker has given a loan to the customer, as a lender the banker has a right to debit the interest to the customer's account. It is an impled right of the banker to charge interest for his loans, uncless there is a contract to the contrary to this right. He is also entitled to collect the compound interest on the amount due to im at half yearly rests.

OBLIGATIONS OF THE BANKER

The obligations or duties of a banker may be explained under the following heads :

1. Obligation to honour cheques.
2. Vicarious liability of a Banker for the fraud committed by his servants
3. Garnishee Order.
4. Obligation or duty to maintain Secrecy of Customer's Account
5. Banker's obligation for Articles deposited with the bank and valuables kept in safe deposit vaults.
6. Duty, not to close customer's account without his consent.)

Obligation to Honour Cheques

It is one of the impled terms of the contract between a banker and a customer to honour cheques drawn by the customer subject to fulfillment of certain conditions under section 31 of the Nogotiable Instruments Act, 1881. The Banker is under statutory obligation to honour his customer's chequs, provided the following condtions are satisfied :

(i) There must be sufficient funds (credit balance) or within the permissible limit of overdraft.

(ii) The funds must be properly applicable to the payment of cheque. (Eg. The customer may hjave two accounts : one showing more credit balance and the other showing less credit balance. He cannot present a cheque for higher amount against his account showing less credit balance, although his other accont shows sufficient credit balance).

(iii) The banker must be duly required to pay. This means the cheque must be presented within a reasonable time i.e., within 6 months. After 6 months, it becomes stale and cannot be honoured. Similarly post-dated (i.e. cheque with future date) cheque cannot be honoured. The customer shall present post dated che1ue on or after the date of cheque and

(iv)The customer shall not be disqualified by law or order of the court (Garnishee Order) to draw the amount from his bank account)

The banker is liable for wrongful dishonour.

Liability of Banker for Wrongful Dishonour : A banker has a statutory obligation to honour his customer's cheques provided, the conditions under Sec. 10 of the Netgotiable Instruments Act, are satisfied. (P.S : This topic 'Banker's obligation to honour customer's cheques also appears in Negotiable Instruments Act). According to Section 31 of the Negotiable Instruments Act, 1881, the Banker is liable to compensate the drawer for loss or damage caused by such wrongful dishnour. Section 31 funs as follows –

"The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such chyeq1ue must pay the cheque when duly required to do so and, in default of such payment, must compensate the drawer for any loss or damage caused by such default".

If there are sufficient funds to meet the cheque and the same is dishonoured by a bank, it can be held liable for the wrongful dishonor of the cheque and required to pay compensation for the dqamage caused thereby. It may be noted that the banker's liablility is towards the payee or the holder of the cheque. The banker has a contractual relationship with the customer only, having a duty to honour his cheques, and therefore, only a cutomer i.e. the drawer can bring an action against the bank for the wrongful dishnour of the cheque.

Assessment of Damages : While assessing computing damages payable as a consequence of wrongful dishnour, the following factors/points are to be taken into consideration.

(i) Monetary loss caused to the drawerpayee and
(ii) Loss of credit and reputation.

The expression 'wrongful dishnour of a cheque means failure to make payment against the che1que by mistake or negligence on the part of the Banker or its emploee'. Eg. An amount deposited and collected had not been credited to customer's account in time. Consequently cheques issued by such customer have been dishonoured for lack of funds. Or dishonor may take place, when the banker gives wrong debit to such customer's account instead of another by mistake.

The terms "loss or damage' under sec. 31 denotes : (i) monetary loss suffered by the customer: and (ii) loss of credit or reputation. In other words, the Banker is liable to compensate not only actual monetary loss, but also the loss of reputation suffered by the customer as a consequence of wrongful dishonor. Sometimes, the customer may claim special damages also.

Justification of Dishonour : A banker is bound or justified in dishonouring the cheques of his customer under the following circumstances –

(i) Where the customer countermands the payment.,

(ii) Where there are not sufficient funds in the customer's account to meet the cheque.,
(iii) When the funds in the customer's account are meant for being utilized for some other purpose (for instance, the banker has lien over such funds under Sec. 171 of the Neghotiable Instruments Act.)
(iv) If the cheque is not properly presented.
(v) When the banker receives the notice of customer's death, bank's authority to pay gets terminated since the funds of the account vests in the legal representatives of the deceased customer.
(vi) When the banker receives the notice of customer's insanity.,
(vii) When the Banker receives order from Court, prohibiting the payment.,
(viii) When the cheque is stale or post-dated and
(ix) wEhen the chyeque is of doubtful legality.

Vicarious Liability of a Banker
For the Fraud committed by his Servants

The word 'Vicar' means the person, who performs the functions of another, a substitute, Vicarious liability means "Liability, which is incurred for or instead of another". For instance, liability of a master for the wrong/tort committed by his servant.

Section 238, Indian Contract Act, provides that misrepresentation made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreement made by such agents as if such misrepresentations or frauds had been made or committed by the principals, but misrepresentations made, or frauds committed by agents in matters which do not fall within their authority, do not affect their principals. It means that when an agent makes a siscrepresentation or commits a fraud, acting in the course of the principal's business, the principal will be vicariously liable for the same. This provision relates to the liability of every principal, including a banker. The position may be explained by referring to the case of –

LIoyd vs. Grace Smith & Co (1912) A.C. 716 : In this case it was held that the master is also held liable for fraudulent acts done by servant for his (Servant's) own benefit.

The defendants were a firm of solicitors. The plaintiff, a widow requested the defendant to prepare documents for sale of her property. But the defendant's servant prepared the documents to transfer the property in his own name. In an action by the plaintiff, the defendant was held liable for the fraudulent act of their servant.

The above view was followed in –

National Bank of Lahore Vs. Sohan La, A.I.R. 1962 Punjab 534 : In this case, the applellant (defendant) bank was held liable for the fraud committed by the Manager of one of its branches.

Garnishee Order

When a creditor who has lent money fails to recover the money, he may file a suit against the debtor and obtain a decree from the court for payment of the debt. Sometimes, the creditor may not find any property in the possession or debtor for execution of decree. Yet, there may be some person who is in possession of debtor's property. In such the creditor may request the court to issue an order attaching the debtor's property in the hands of the their part. If the court isses such order, such order is called 'Garnishee Order'.

The word 'Garnishee' is derived from a Latin word 'garnir' which means to warn the third party. Since it is a warning to the their party with regard to property of others in his hand, it is named as garnishee order. As stated above, there are certain cases in which a creditor may request the court to issue an order to attach the properly belonging to the judgement debtor in the hands/possession of some third party so as to enable him (creditor) to execute the decree. In such a case, if the court issues order, it is called the 'Garnishee Order'. Section 60 of the Code of Civil Procedure, 1908, lays down the provisions relating Garnishee Order.

The banker has an obligation to hnour his customer's cheques, and is liable for wrongful dishnour. Similarly, the Banker has an obligation to stop payment by dishnouring his customer's cheque, when he receives Garnishee Order against his customer's account.

According to section 60 of the Code of Civil Procedure, 1908, debts due to a judgement debtor by third parties are liable to attachment in execution of the decres of Civil Courts. Garnishee Order is an order of the court, issued under Order XXI, Rule 46 of the Code of Civil Procedure, 1908, directing the banker to stop payment to a particular customer, whose name is mentioned in the order.l

When a debtor fails to repay his creditor, the latter (creditor) may apply to the court for the issue of a Garnishee Order on the banker of his debtor. By Garnishee Order, the debtor's account with the banker stands suspended and the debrtor (customer) will not be allowed to draw, though he has a credit balance. The creditor at whose request, the order is issed is called 'the judgement Creditor', the customer is called judgement debtor, and the banker (debtor of the judgement debtor) is called Garnishee'.

Features of Garnishee Order :

(i) It (Garnishee Order) attaches the entire or specific amount of the customer (Judgement Debtor).
(ii) It does not extend to over draft account of the Judgement debtor, though he had not drawn the amount permitted under O.D.
(iii) It is not applicable in case of cheques, bills of exchange, drafts etc. presented by customer and sent for collection (which remain uncleared at the time of order).

(IV) It cannot attach the amounts deposited into the customer's account after the order.
(V) It is not effective in respect of payments already made before the receipt of the order.
(VI) It is not applicable to money held abroad by the Judgement Debtor.
(VII) It is not applicable to securities held in safe custody of the Banker or trustee.
(VIII) It may be served on the Head Office of the Bank concerned and it will be treated as sufficient notice to all the branches.
(IX) It is not effective against a joint account in which only one is a judgement debtor or all are not judgement debtors.
(X) It may be issued against income tax defaulters also.

Kinds of Garnishee Order : The Garnishee Order issued by the court is of two kinds namely –

(i) Order Nisi or Preliminary Order and
(ii) Order Absolute or Final Order

(i) **Order Nisi :** Order Nisi is a preliminary order issued to the banker :

(a) to stop the payment over the customers account.
(b) To give explanation, why, the judgement debtors credit balance in his account should be used for the purpose of payment of the judgement creditor and
(c) It is also a duty of the banker to inform the same to his customer.

(ii) **Order Absolute :** It is a final order issued by the cvourt to the banker to pay the amount in the judgement debtors account to the judgement creditor (decree holder) according to the direction given by the court.

Effect of Garnishee Order : After receiving garnishee order, banker is justified in dishnouring the cheques of his customer. So customer cannot claim the damages for dishnour.

Secrecy of Customer's Accounts

The Banker is under an obligation to take utmost care to maintain the secrecy of his customer's account. Secrecy in the sense, the banker should not dischose the position of his customer's accounts to any member of the public or Government official except under statutory or lawful authority (Eg. Garnishee Order).

Section 13 of the 'Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, imposes on Banker, such obligation to maintain secrecy of his customer account. The duty to maintain the secrecy of the customer's established. This duty is not only limited to the bank accounts, but also it extends to all other facts, shich may come to the notice/knowledge of the banker from any other sources. The

duty/obligation to maintain secrecy of the customer's account was legally imposed on banker in 1924 in a leading case.

Tournier vs. National Provincial and Union Bank of England (1924) : K.B. 461) : In this case it was held that the banker must not disclose the position of the customer's account except on reasonable and proper occasions and he should not disclose the state of customer's account even after the account is closed.

Tournier was the plaintiff and National Provincial and Union Bank of England Ltd was the defendant. The plaintiff was working in M/s Kenyon & Co. on temporary basis and his employement was to be permanent. He overdrew from the defendant bank to a sum of 9 pounds 8 cents 6 d., and he agreed to pay by weekly instalments of 1 pound. Out of this amount, he paid some amount to a bookmaker towards the purchase of certain goods.

On one day, Tournier did not come to duty. The Directors of the Kenyon & Co. telephoned the Bank Manager of the defendant company to know the plaintiff's address. In the conversation, the Bank Manager passed the information that the plaintiff was overdrafted and he made the payment to a bookmaker. The Directors misled the information that the plaintiff was a gambler and was in practice of betting, and also he was insolvent. Therefore, they did not permanent the plaintiff and ousted him from the employment. Therefore, they did not permanent the plaintiff, who filed a suit against the bank for not keeping the secrecy of the customer, and for the compensation of the job he lost.

The lower court dismissed his petition. He preferred appeal. The Court of Appeal allowed his appeal and gave the judgement in his favour opening that the Bank Manager violated his duty and caused loss to the customer (plaintiff)

Exceptions : Discloure of customer's account is justified under the following circumastances :

(i) The Banker's Book of Evidence Act
(ii) The Income Tax Act, 1961
(iii) The Companies Act, 1956
(iv) The Reserve Bank of India Act, 1934
(v) The Banking Regulation Act, 1949
(vi) The Gift Tax Act, 1958
(vii) The4 Code of Criminal Procedure, 1973 and
(viii) The Foreign Exchange Regulations Act, 1933.

Consequences of wrongful disclosure : When the banker improperly discloses any information of his customer's account in which customer incurs any loss, the banker is liable for that. Now banker's liability is of two types i.e.

(a) Liability to the customer, and
(b) Liability to third party.

The customer may sue for breach of contract in case he incurs loss. Sometimes a third party may also incur some loss due to disclosure of the customer's account, then the banker is also liable to the third party :

(a) When he gives such an information with the knowledge that it is false, and
(b) Such party acts on that information and suffers a loss.

Banker's Obligation for Articles Deposited with the Bank and Valuables Kept in Safe Deposit Vaults.

When a cheque, bill of exchange, dividend warrant or other such instrument is deposited with a bank for collection, he bank has a duty to collect the same and credit the customer's account with the proceeds realized. For such collection he serves as an agent of the customer. If a cheque is dishonoured, the bank to whom the same was given for a collection, has a duty to inform the customer of the same, and to return the dishonlured cheque. If a cheque could not be collected and is lost in transit, the bank should inform his customer about the same within a reasonable time (Syndicate Bank v. Swaika Chemical Works, (1987) 61 Comp. Cas. 752).

`Valuables Kept in Safe Deposit Vaults :

A bank is not a bailee of the valuables kept by a customer in a locker of the safe deposit vault of a bank, and therefore, it does not attract the liability of the bank as a bailee in respect of such goods. The position would, however, be different when the lock of a locker has been tampered with by a bank employee before hiring the locker to a customer in National Bank of Lahore v. Sohan lal (AIR 1962 Punjab 534), the manager of a bank in which the customer had hired a locker and kept his valuables, had filed the levers of the lock before handing over the possession of the locker to the customer. The manager, who was living in the bank premises, could open the locker without the customer's key. He opened the locker and took out the valuable of the customer. The bank wqas held liable for this fraud of the bank manager. The bank's liability arose in its capacity as bailee, because due to the de4fective lock, the possession of the valuables kept in the locker was with the bank, rather than the customer. The bank was also liable on the basis of the principle of vicarious liability, for the fraud committed by its servant (agent) in the course of employment.

When there is no proof of entrusting exclusive control to the bank of jewellery kept in the locker, and also no proof of the contents of the locker, it is not a case of bailment to attract bank's liability for negligence. More so, where there is no sufficient material to hold that robbery occurred due to the bank's negligence, the bank cannot be held liable for alleged loss of jewellery allegedly kept in the bank locker.

In Atul Mehra, v. Bank of Maharashtra (2002 (2) ISJ (Banking) 575 (P&H), the customer alleged that be had hired a bank locker and kept jewellery worth Rs. 4,26,100/- and the same was stolen due to the bank's negligence and he claimed compensation in respect of the same.

It was held that –

(i) It was not a case of bailment as there was no exclusive banking over the possession of jewellery to the bank, and in the absence of bailment under section 148 of the Contract Act, bank's liability could not arise.
(ii) The plea that bank robbery had occurred due to the bank's negligence, was also rejected, as there was no sufficient material to hold bnak's negligence in the matter. The bank could not be held liable for the reason also.

Duty not to close Customer's Account without his consent :

Another obligation of the banker is not to close the customer's account without his consent. By closing the account, it severed the relationship between the banker and the customer. Every customer had a right to open an account in any scheduled bank when he satisfies the requirements to open an account. Once money is deposited and it is accepted by the banker, it is his obligation to keep the account without closing even if it is not operated by the customer. When banker wants to close the customer's account, he should inform the customer in writing and it should be accepted by the customer, then only banker can close the account, otherwise the banker is responsible to his customer. If customer wants to close the account, he can do so by sending a written notice to the banker.

SPECIAL TYPES OF BANKER'S CUSTOMERS

In discharge of primary function, banker invites the public to open an account with the bank. Opening of an account with a bank, is creation of a special contract so that the principles of contract viz. capacity to contract, free consent etc. are strictly adhered to. Therefore a banker must be very careful, while opening an account in the name of a customer particularly at the time of opening/accepting accounts in the name of special category of customers viz. minors, partnership firm, joint stock company, club etc. This lecure deals with the preceautions to be taken by the Banker, while opening as account in the name of the "Special Types of Customers" as follows :

1. Minor
2. IIteate
3. Lunatic
4. Married woman
5. Joint account
6. Joint Hindu Family
7. Trust account
8. Clubs, Societies and Chartable Institutions
9. Parternship Firm and
10. Joint Stock Conpanies.

Minor

A minor is a person, who has not completed 18 years of age. The minority extends to 21 years, if a guardian of his person or property is appointed by the Court (See 3 of Indian Majority Act, (1875). Before 1969, in England the age of minority was 21 years. The are of minority is reduced to 18 years after passing of the Family Law Remorms Act, 1969. In other words, in England also, a person who has not completed the age of 18 years is aminor.

According to Sec. 11 of the Indian Contract Act, 1872, a minor is not competent to contract. A contract entered into by a minor is void ab initio i.e. invaliecd from the very beginning (as liad down by the Privy Council in Mohri Bibi vs. Dharmadas Ghose (1903) 30 I.A 114 (P.C.). However, a contract with a monor for supplying of ncessessaries to minor or hs dependants is valied and enforeceable (Se. 68, Indian Contract Act, under the Principle of Equity).

According to Sec. 26 of the Negotiable Instruements Act, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all the parties, except himself. He need not incur any liability under the negotiable instrument, but he can acquire rights over the instruments. However, the minor is bound by the withdrawals made by him and the bank can legally debit his account.

Therefore, a Banker may open an account in the name of a minor in the following ways –

(a) In the name of the minor or
(b) In the joint names of the minor and his guarda\ian or
(c) In the name of the guardian.

In the first case an account can be operated by the minor himself and there is nothing unlawful, since, Sec. 26 of the Act allows the minor to do so. In the second case, an amount can be operated jointly by the minor and his guardian. In the third case, when the account is operated on behalf of the minor, the Minor should have completed 14 years and he must be capable of reading and writing.

As the minor is immune from liability under the contract, the Banker must be very careful and should take the followingprecautions while dealing with the Minor.

(i) He (the banker) may open savings bank account (and not a current account) in the name of a minor.
(ii) The bank records the date of birth of the minor as given by the minor or his/her guardian. When the minor attains majority, the banker has to close the account and should open a new account in his name as major (i.e. the name of the minor, who became the major). The credit balance if any (from the account closed) should be transferred/credited to the new account.
(iii) In case the minor dies, the guardian can be permitted to withdraw the amount. In case of joint account in the names of minor and his/her guardian, the balance will be held at the absolute disposal of the guardian.

(iv) There is no risk involved so long as the minor's account shows credit balance. In case, the minor's account is overdrawn even by mistake or unintentionally, the banker cannot recover the amount. Even if the minor has pledged some asset as security, such pledge itself is invalid and the Banker cannot exercise any lien over it. The reason is, a minor can be a promise or beneficiary but cannot be a promisor.

(v) The Banker should not grant an advance to a minor even against the guarantee by a third person, who is a major since the contract with minor itself is voild, the guarantor or surety also is not liable unless there is some specificprovision to that effect.

(vi) A minor may draw, endorse or negotiate a cheques or a bill but he cannot be held liable on such cheques or bill. He cannot be sued in respect of a bill accepted by him during his minority. Such bill or cheque, nevertheless, will be a valid instrument and all other parties will be liable in their respecti e capacities (Section 26 of the Negotiable Instruments Act, 1881). The banker should, therefore, be very cautious in dealing with a negotiable instrument, to which a minor is a party.

IIliterate

IIliterate persons cannot sign their names and hence the banker take their thumb impression as a substitute for signature, and also a copy of their recent photograph. The application form and the photograph should be attested by an approved witness. For withdrawing money, he must attend personally and affix his thumb impression in the presence of an official of the bank, for the purpose of identifications.

Lunatie

According to Sec. 12 of the Indian Contract ACvt, 1872, a person of unsound mind is not competent to enter into a valid contract. A person is said to be of sound mind for the purpose of making a contract if he is capable of understanding it and of forming a rational judgement as to its effect upon his interests (Section 12). It is important that he should be of sound mind at the time he enters into a contract. If a person is usually of unsound mind but occasionally of sound mind, he may make a contract when he is of sound mind. Similarly, if a person is usually of sound mind but occasionally of unsound mind, he cannot enter into a valid contract when he is of unsound mind. A contract entered into by a person of unsound mindis a void contract according to the Indian Contract Act, 1872.

The banker should therefore, not open an account in the name of a person who is of unsound mind. But if a banker has discounted a bill duly written, accepted or endorsed by a lunatic he can realize the money due on the same from such person except in the circumstances where it is proved that the banker was aware of the lunacy of the person concermed at the time he discounted the bill. The banker should suspend all operations on the account of a customer as soon as he receives the news of his lunacy till he gets the proof of his sanity or is served with an order of the court.

Partnership Firm

When two or more persons (subject to a maximum of 10 in Banking and 2 in non-banking) carry on business to share profits and losses equally or in proportion of capitals, it is called 'Partnership business'. The Indian Partnership Act, 1932 defines partnership as "The relation between the persons who have agreed to share the profits of the business carried on by all, or by any one of them acting for all". The persons are called 'Partners and the business is called 'Partnership Firm'. In partnership, the liability of partners is unlimited.

A banker should take the following precautions, while opening an account in the name of a partnership firm :

(i) He (Banker) must examine carefully, the partnership deed to acquaint himself with the constitution and business of the firm.
(ii) He must check that the number of partners is not less than two and not more than 10 in case of banking business and 20 in case of non-banking business.
(iii) The accont should be opened in the name of the firm, not in the name of partner/partners.
(iv) The Banker can insist all the partners to join, to open the account, and must obtain specimen signatures of all the partners.
(v) The Banker should take a letter or mandate containing :

    (a) the names and addresses of the partners;
    (b) nature of business undertaken by the firm;
    (c) name/names of the partner/partners who will operate the account.

(vi) If a cheques in favour of firm is endorsed to a partner, the banker should not honour it without making necessary enquiry.
(vii) If there is a minor partner, his date of majority should be obtained to ensure that a fresh partnership later signed by him on attaining majority.

Joint Stock Companies

A company is an artificial person, created by law with perpetual existence and common seal. To acquire legal personally (to sue and be sued) it must be incorporated/registered under the Indian Companies Act, 1956. A Banker has to take the following precautions while opening an account in the name of a Joint Stock Company.

(i) He (Banker) must ensure that the company (applicant to open an account in the Bank) is incorporated/registered under the Indian Companies Act, 1956 (so that the Banker can sue the company for default or brach of contract if any in future).
(ii) He has to thouroughly examine the following docuements of the company –

    (a) Certificate of Incorporation, issued by the Registrar of Joint Stock Companies to ensure that the company (whether Private

Limited or Public Limited) is incorporated under Companies Act.

(b) Certificate of Commencement of Business in case, the applicant is a Public Limited Company. (A Private Company can start business after getting the certificate of Incorporation. But a public company can start business only after obtaining the certificate of commencement of Business issued by the Registrar of Joint Stock Companies).

(c) Memorandum of Association and Articles of Association are the most important documents, submitted to the 'Registrar for Incorporation. Memorandum contains the relationship between the company and outsiders (public) while the Articles contain the constitution of the company.

(iii) He must obain from the applicant, a copy of the 'Resolution passed by the Board of Directors' –

(a) to ensure that the Bank is appointed as Banker of the Company'.
(b) To know the persons authorized to operate the Account, and
(c) to know the borrowing poer of the company and the persons so authorized to borrow.

(iv) If the person authorized to operate the company's account is having his personall account also with the bank, the banker must properly enquire about the cheques endorsed and deposited in personal account so as to avaid unauthorized transfer/diversion of Company's funds.

RESERVE BANK OF INDIA

Today there is a central bank for each and every country in the world. The Reserve Bank of India is the Central Bank of our country. It was established under the Reserve Bank of India Act, 1934 and started functioning from April 1, 1935. It was nationalized with effect from January 1, 1949. It performs variety of functions, both traditional and promotional.

Organisation of the Reserve Bank of India

The affairs of the Reserve Bank of India are managed by the Central Borad of Directors. The Central Board of Directors consists of :

(i) A Governor and not more than four Deputy – Governors appointed by the Central Government under Section 8(1) (a) of the Reserve Bank of India Act, 1934.
(ii) Four Directors nominated by the Central Government, one from each of the four Local Boards in terms of Section 8(1) (b).
(iii) Ten Directors nomimated by the Central Government under Section 8(1)(c), and
(iv) One Government official nominated by the Central; Government under Section 8(1) (d).

The Reserve Bank of India has Local Boards with Headquaters at Bombay (Mumbai), Calcutta (Kolkata), Madras (Chennai) and New Delhi. Local Boards consist of five members and trhese members are appointed by the Central Government as far as possible to represent territorial and economic interest, the interest of co-operatives and indigenous banks.

The Chairman of the Central Board of Directors of the Reserve Bank of India is called the Chief Executive Authority of the Bank and he is known as the Governor. The Governor has the powerws of general Superintendence and direction of the affairs and business of the bank and he is authorized to exercise all powers, which may be exercised or done by the bank. In the absence of the Governor, the Deputy Governor norminated by him in this behalf exercises his powers.

It is notable that authorities have different opinions with regard to the origin of the word 'Bank'. Some authorities say that the word 'bank' is derived from the Italian word 'Bancus' or 'Bankque' or 'Banco' which all mean a bench. It is said that the early bankers in Italy transacted their business on benches in the market place; and when a banker failed his 'banco' was broken up by the people, from where the word 'bankrupt' has been originated. According to another opinion, the word 'bank' has originated from the Italian word 'Banchi' or 'Bancheri' because the business houses which were engaged in early banking were called 'Banchi' or 'Bancheri'. Some others ho]d that the word 'bank' has been derived from the German word 'Bankon' which means a joint stock fund. Still others have the opinion that the word 'bank' has been originated from the French word 'banke'. According to Macleod, the real meaning of the word 'bank' is heap (or pile) or mountain and it indicates toward a joint fund collected by many persons. Thus, it is difficult to say which opinion is more correct. However, it is certain that the modern type of joint stock banks were started in Europe and then they spread over the whole world.

The word 'bank' or 'banker' or 'banking company' has been formally defined as follows:

Banking Regulation Act, 1949 [Sec. 5(c)] : "Banking Company means any company which transacts the business of banking in India." According to Section 4 B, "Banking" means the accepting of deposits of money from the public for the purpose of lending or investment, which are repayable on demand or otherwise and are withdrawable by cheque, draft, order, or otherwise.

It may be noted that according to Section 3 of the Negotiable Instrument Act, 1881, the word "banker" includes any person acting as a Banker as well as any post office savings back.

Charles Woelfel's Encyclopaedia of Banking and Finance : "Bank is any organiation engaged in any or all of the various functions of banking, i.e., receiving, collecting, transferring, paying, lending, investing, dealing, exchanging, and servicing (safe deposit, custodianship, agency, trusteeship) money and claims to money both domestically and internationally.

FUNCTIONS OF A BANK : BUSINESS OF A BANKING COMPANY

As per the provisions of the Banking Regulation Act, the functions of a bank can be divided into two categories. I. Compulsory functions, and II. Permitted function.

I. Compuslor Function of a Bank

On the basis of the legal definition of bank (Section 5), a bank has its following essential functions i.e., business of banking :

1. Accepting of deposits of money from the public
2. Leading or investment of the accepted deposits of money.
3. Providing facilties of demand and time deposits.
4. Facilitating withdrawal of the deposits of money through cheque, draft, order, or otherwise.

II. Permitted Functions of a Bank

In addition to the business of banking (compulsory functions), a bank may engage in any one or more of the following forms of business (as per Section 6): 1. Borrowing, raising, or taking up of money.

2. Lending or advancing of money either upon or without security 3. Drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis (hoondees), promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether

trans ferable or negotiable or not. 4. Granting and issuing of letters of credit, travellers cheques and circular

5. Buying, selling and dealing in bullion (gold or silver) and specie (metallic coins).

6. Baying and selling of foreign exchange including foreign bank notes.

7. Acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations,
securities and investments of all kinds.

8. Purchasing and selling of bonds, scrips or other forms of securities on behalf of the constituents or others.

9. Receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise.

10. Providing the safe deposit vaults.

11. Collecting and transmitting of money and securities.

12. Acting as agents for any Government or local authority or any other person or persons.

13. Carrying on agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and other-
wise acting as an attorney on behalf of customers, but excluding the business of a managing agent or secretary and treasurer of a company. (Moreover, by implication of Section 384 of the Companies Act, a bank cannot act as a manager.) 14. Contracting for public and private loans and negotiating and issuing the same.

15. Effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending" of money for the purpose of any such issue,

16. Carrying on and transacting every kind of guarantee and indemnity business.

17. Managing, selling and realising any property which may come into the possession of the company in satisfaction of any of its claims.

18. Acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or its part for any loans or advances or which may be connected with any such security.

19. Undertaking and executing trusts.

20. Undertaking the administration of estates as executor, trustee or otherwise.

21. Establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts, and conveniences
calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons. Granting provisions and allowances and making payments towards insurance.

22. Acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company.

23. Selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company.

24. Acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described above.
25. Doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.
26. Any other form of business which the Central Government may specify through a notification in the official Gazette, as a form of business in which it is lawful for a banking company to engage.
It may be noted that as per law, a bank cannot engage in any form of business other than those mentioned as above. Madras High Court (1983) held that a chit fund transaction carried on by a banking company is a banking activity under Section 6. Gujarat High Court (1989) held that Loan Organisations such as "Loan Mela" are not objected under the banking practice.

It is important to note that the aforesaid functions are frequently performed by banks in developed countries. In fact, these functions are those of the "mixed banks' including commercial banks, merchant banks, exchange banks and development banks. However these functions do not include those which are performed by the central banks, such as ; issuing notes, performing Government business, controlling credit money, etc.
Restrictions of Business of a Bank : Prohibition of Trading
According to Section 8, banks are restricted to do the following trading :
1. Buying, selling or bartering of goods : A bank is prohibited from dealing directly or indirectly in buying or selling or bartering of goods, except in connection with the realisation of security given to it or held by it. [For the purpose of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion (gold and silver), and specie (metallic coins), and instruments such as bills of exchange, Hundi, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips, etc.]
2. Engaging in any trade: A bank is prohibited from engaging in any trade, but if a banking company has acquired (not for its own use) any immovable property in the course of its business, it is exempted, under Section 9, to dispose of such property within seven years from its acquisition. (Reserve Bank can extend this period by another period of 5 years.)
3. **Buying, selling or bartering goods for others:** A bank is prohibited from buying, selling or bartering goods for others. There are two exceptions in this regard :
(a) A banking company can buy, sell or barter bills of exchange which it has received from others for collection or negotiation, and (b) when a banking company undertakes the administration of estates as executor, trustee or otherwise, it can trade in such estates.

The Banking Companies Act, 1949 was passed to consolidate and amend the law relating to banking companies. The need for this was felt mainly due to two reasons : (i) the person who were controlling some banks, were abusing their powers and there were no measures for safeguarding the interests of the depositors, and (ii) there was greater need to safeguard and promote the economic interests of the country in genera!. It is important to note that with effect from 1st March, 1966, the name of the Banking Companies Act has been changed to the "Banking Regulation Act, 1949."
Main or Major Provisions or Characteristics of Banking Regulation Act, 1949
All the provisions of the Act have been divided into five parts. There are in all fifty six Sections and five Schedules attached to the Act. The main provisions or contents or characteristics of the Act may be summarised as

1. Title, extent and commencement : According to Section 1, the Act is called the Banking Regulation Act, 1949. It extends to the whole of India. It came into force on 16th March, 1949. A chit fund transaction under the Chit Fund Act, 1982 is also a banking transaction and is covered under the Banking Regulation Act. 1949.

2. Definition of Banking: According to Section 5(b), "banking" means the accepting of deposits of money from the public for the purpose of lending or
investment, repayable on demand or otherwise and withdrawable by cheque, deaft, order or otherwise. It may be noted that "banking does not include other commercial activities carried on by a banking company".

Section 5(c) states that "banking company" means any company which trsndscts the business of banking in India. According to explanation to Section 5, any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business, shall not be deemed to transact the business of banking, and therefore shall not be called a "banking company".

Section 7 stipulates that every banking company, and no other company, shall use any of the words "bank", "banker", or "banking" as part of its name. Only then, it can carry on the business of banking in India.

3. Business of Banks : Section 6 provides a list of various forms of business which a banking company may do in addition to the business of banking. For the details of this list, see Chapter 1.

4. Prohibited functions of Banks: According to Section 8 and 9, the barnks cannot engage themselves in carrying on the following activities:

(i) No banking company shall directly or indirectly deal in the buying or selling or bartering of goods, or engage in any trade.

(ii) No banking company shall buy or sell, or barter goods for others.

(iii) No banking company shall hold any immovable property howsoever acquired for more than 7 years from the acquisition thereof. However, it can. hold any immovable property required for its own use.

5. Management of a Bank : With regard to the management of a banking company, Section 10 provides as follows:

(i) A banking company cannot employ or be managed by a managing agent.

(ii) It cannot employ "any person" who has been adjudicated insolvent, or has been convicted by a criminal Court for any act of moral turpitude; who is a director of any other company; who is engaged in any other business or vocation; whose terra of office as a person managing the company is for more than 5 years at any one time; whose total remuneration or its part takes the form of commission or of a share in the profits of the company; and whose remuneration is excessive in the opinion of the Reserve Bank of India.,

(iii) The board of directors of a banking company shall include not less then 51% of its total number of members, persons with professional or other practical experience in the matters such as accountancy, agriculture and rural economy, banking, cooperation, economics, finance, law, small scale industry, etc.

(iv) Every banking company shall be managed by a whole-time chairman who shall be entrusted with the management of the whole of its affairs. The chairman shall exercise his powers subject to the superintendence, control, and direction of the board of directors. The chairman shall be one of the directors. (v) Section 16 prohibits common directors and states that a banking company cannot have a person as director, who is a director of any other banking company.

6. Capital and Reserves: According to Section 11, the aggregate value of a banking company's paid-up capital and reserves shall not be less than Rs. 5 lakhs, if the bank

has been established after 16th September, 1962. This minimum amount varies according to the number of places of business in one or more states and also with the nature of banks such as Indian banks and foreign banks whose branches are in India.
Section 12 states that the subscribed capital of a banking company cannot be less than 50% of the authorised capital, and the paid-up capital cannot be less than 50% of the subscribed capital. Further, the capital of the company shall consist of ordinary shares or equity shares only. A shareholder cannot exercise Ms voting rights on poll in excess of 10% of the total voting rights of all the shareholders of the banking company.
According to Section 17, every banking company shall create a Reserve Fund (known as Statutory Reserve Fund), and before declaring any dividend, transfer to it at least 20% of its profit each year) Whenthe amount in the reserve fund together with the amount in the share premium account equals the paid-up capital, then (and not before that) the Central Government on the recommendation of the Reserve Bank, can allow a banking company not to transfer the stipulated 20% of profit to the reserve fund. The Reserve Fund cannot be used for any purpose until it is equal to the paid-up capital. Where a banking company appropriates (uses) any amount from the Reserve Fund or the share premium account, it shall report the fact to the Reserve Bank within 21 days of such appropriation, explaining the circumstances thereof.
Section 18 states that every unscheduled bank shall maintain a Cash reserve with itself or in a current account with the Reserve Bank equal to at least 3% (increasable upto a maximum of 15%) of the total of its demand and time liabilities in India.
According to Section 24, every bank shall maintain a liquid reserve in cash, gold or unencumbered approved securities at least 25% of the total of its demand and time liabilities in India.
7. Restrictions concerning payment of dividend: According to Section 15, no bank shall pay any dividend on its shares until all its capitalised, expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amount of losses incurred or any other item of expenditure on intangible assets) have been completely written off. However, the bank may pay such dividends without writing off the depreciation on investment in approved securities, or the depreciation on investment in shares, debentures or bonds (other than approved securities), and the bad debts.
8. Restriction on nature of subsidiary companies: Section 19 states that a banking company cannot form any subsidiary company. However, it may pstablish a subsidiary company in the following circumstances : (i) To undertake any one or more forms of business permissible for a banking company under Section 6 (see Chapter 1 for details); or (ii) To carry on the business of banking exclusively outside India. However, before creating a subsidiary company for this purpose, previous permission in writing of the Reserve Bank is necessary; or (iii) To undertake such other business which the Reserve Bank may, with the prior approval of the Central Government, consider to be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest.
9. Restrictions on Loans and Advances: According to Section 20, the fallowing restrictions have been laid down on loans and advances of a bank: (i) A bank cannot grant any loans or advances on the security of its own shares.
(ii) It cannot enter into any commitment for granting any loan or advance to or on behalf of any of its directors; any firm in which any of its directors is interested as partner, manager, employee, or guarantor; any company in which any of the directors of the bank is a director, managing agent, manager, employee, or guarantor; any company in which any of the directors of the bank holds substantial interest; or, any individual in respect of whom any of its directors is a partner or guarantor.

(iii) Abank cannot remit (mitigate or leave) the whole or anypart of a love or advance granted by it, without the previous approval of the Reserve Bank
Any remission without such approval shall be void and of no effect.

10. Licensing of banking companies: According to Section 22, a banking company cannot carry on banking business in India unless it holds a licence
issued in that behalf by the Reserve Bank. Before commencing banking business in India, every banking company shall apply in writing to the Reserve
bank for a licence. Before granting any licence, the Reserve Bank has to be satisfied that the following conditions have been fulfilled:
(i) The banking company is or will be in a position to pay its preset or future depositors in full as their claims accrue.
(ii) The affairs of the company are not being or likely to be conducted in manner detrimental to the interests of its present or future depositors.
(iii) The general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors.
(iv) The company has adequate capital structure and earning prospects.
(v) The public interest will be served by the grant of a licence to the company to carry on banking business in India.
(vi) Having regard to existing banking facilities and the potential scope for expansion of banks in the proposed area, the grant of licence would not be
prejudicial to the operation and consolidation of the banking system with monetary stability and economic growth.
(vii) Any other condition, the fulfilment of which would be in the public interest or the interests of the depositors, in the opinion of the Reserve Bank.

The Reserve Bank may cancel a licence granted to a bank in the following circumstances:
(a) if the bank ceases to carry on banking business in India; or
(b) if the bank fails to comply with any of the conditions imposed upon it by the Act.
However, the aggrieved bank may appeal to the Central Government against the decision of the Reserve Bank for cancelling the licence, whose decision in the matter shall be final.
11. Opening of new branches and transfer of existing branches: Section 23 provides that without obtaining the prior permission of the Reserve Bank, a banking company cannot open a new branch. It cannot change the location of an existing branch. The same restriction applies to opening or transferring branches outside India. However, a temporary branch may be opened for a, maximum period of one month for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference, or a 'mela' or any other similar occasion, if the banking company already has a branch in that city, town, or village.

12. Assets, returns, information, accounts and audit: A banking company is required to observe and comply with the following requirements : (i) As per Section 25, every banking company shall maintain its assets in India at least 75% of its demand and time liabilities in India. It shall submit to the Reserve Bank a quarterly return of its assets and liabilities. (ii) As per Section 26, every banking company shall submit an annual return of each calender year to the Reserve Bank with the details of all accounts which have not been operated upon for 10 years.
(iii) As per Section 27, every banking company shall submit a monthly return to the Reserve Bank showing its assets and liabilities in India. The Reserve Bank has power to call for other returns and information which it may consider necessary or expedient.

(iv) As per Section 29, at the expiry of each calender year, every banking company shall prepare a balance sheet and profit and loss account for that year in the forms set out in the Third Schedule or as near thereto as circumstances admit.
(v) As per Section 30, the balance sheet and profit and loss account shall be audited by a person duly qualified to be an auditor of companies.
(vi) As per Section 31, the accounts, balance sheet and profit and loss account together with auditor's report shall be published in prescribed manner
and three copies thereof shall be furnished as returns to the Reserve Bank, and as per Section 32, the same number of copies shall also be sent to the Registrar.
(vii) As per Section 33, banking companies incorporated outside India shall display at their principal offices and in every branch office in India, a copy of
its first audited balance-sheet and profit and loss account, in a conspicuous place.
Section 34A protects a banking company from being compelled to give canfidential documents and information. Similarly an employee of the bank cannot be compelled to do so (AIR 1983).

13. Inspection : According to Section 35, the Reserve Bank on its own or on being directed by the Central Government, can cause an inspection of any banking company and its books and accounts; may also cause a scrutiny of its affairs and books and accounts, and the officers of the company shall have to fully cooperate with it. The Reserve Bank shall supply a copy of its report on such inspection or scrutiny to the banking company, and to the Central
Government if the inspection has been directed by her.

14. Prohibition of certain activities in relation to banking companies: According to Section 36AD, any person must not obstruct the business of a banking company; must not hold within its office any demonstration which is violent or which prevents its normal business; and must not act in any manner calculated to undermine the confidence of the depositors in the banking
company. Whosoever contravenes these provisions without any reasonable excuse, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 1,000 or with both.
15. Acquisition of the undertakings of banking companies in certain cases: Section 36AE states that the Central Government has the power to acquire undertakings of a banking company if upon receipt of a report from the Reserve Bank, she is satisfied that the banking company has failed to comply with the Reserve Bank's policy in relation to advances or the directions given by it, or is being managed in a manner detrimental to the interests of its depositors, after giving a reasonable opportunity of showing cause against the proposed action. As per Section 36AG, compensation shall be given to shareholders of the acquired bank.
16. Suspension of business (moratorium) and winding up of banking companies: According to Section 37, if a banking company is temporarily unable to meet its obligations, it may apply for a moratorium to the High Court. (Moratorium means a legally authorised postponement of fulfilment of an obligation). The High Court may make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it may think fit and proper. However, the total period of moratorium shall not exceed 6 months. The High Court shall forward a copy of its order of moratorium to the Reserve Bank. As per Section 38, the High Court can order the winding up of a banking company if it is unable to pay its debts, or if an application for its winding up has been made by the Reserve Bank. The Reserve Bank may make an application for the winding up of a banking company : (a) If the banking company

has failed to comply with the requirements concerning minimum paid-up capital and reserves, or has become disentitled to carry on banking business due to non-fulfillment of any of the licensing conditions; or has been prohibited from receiving fresh deposits by an order of the Reserve Bank; or has contravened any provision of the Banking Regulation Act; or (b.) If in. the opinion of the Reserve Bank a compromise or arrangement sanctioned by a Court cannot be worked satisfactorily with or without modifications; or the returns and information furnished to it disclose that the company is unable to pay its debts; or the continuance of the company is prejudicial to the interests of its depositors.

17. Procedure for amalgamation of banking companies: According to Section 44A, a banking company cannot be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of such companies separately, and approved by a resolution passed by a 2/3rd majority of shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

20. Restriction on acceptance of deposits withdrawable by cheque: According to Section 49A, no person other than a bank shall accept deposits of money withdrawable by cheque.

21. **Change of name** of **banking company** : According to Section 49B, a banking company can change its name if tie Reserve Bank has no objection to such change and the Central Government gives its approval to such change. **22. Power of Central Government to make rules:** According to Section 52, after consultation with the Reserve Bank, the Central Government may make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the official Gazette.

23. Power to exempt in certain cases: Section 53 states that on the recommendation of the Reserve Bank, the Central Government may declare by notification in the official Gazette that any or all of the provisions of the Act shall not apply to any banking company or institution generally or for such period as may be specified.

24. Act to apply to cooperative societies: According to Section 56, the provisions of this Act shall apply to cooperative societies as they apply to banking companies, but subject to certain modifications.

5. Government banker: Reserve Bank has succeeded in acting as banker to the Central Government and the State Governments. It has always come to the rescue of the Government by providing auch services as : managing public debt, exchange control, financing of five-year plans, collection of government revenues, disbursement of government payments, giving short-term and long-term loans, and so on.

6. Bankers' banker : Reserve Bank has helped the commercial banks by acting as a bankers' bank. The important functions performed by it in this regard are: extending short-term loans and advances against eligible securities, rediscounting of bills of exchange and promissory notes, providing liberal concessional refinance facilities, making purchases and sales of foreign currencies, and so on.

MINORS : PRECAUTIONS TO BE TAKEN BY THE BANKER

According to Section 3 of the Indian Majority Act, 1875, every person domiciled in India shall attain majority (0 in general cases, when he has completed the age of 18 years and not before; or (ii) in two special cases, where a guardian of minor's person and property has been appointed by the Court under the Guardian and Wards Act, 1890, or where a minor is under the guardianship of Court of wards (before the age of

18 years), a minor shall attain majority when he has completed the age of 21 years and not before- Section 4(a) of the Hindu Minority and Guardianship Act, 1956 provides that a 'minor' means a person who has not completed the age of 18 years.
According to Section 11 of the Contract Act, 1872, a minor is not competent to contract. Since the decision made in the case of Mohri Bibee vs Dhurmodas Ghose (1903), it is an established rule in India that an agreement with a minor is void ab initio, namely, since its conception and inception. Since a minor is under a legal incapacity to enter into a contract, this in turn affects his capacity to hold, acquire or dispose of property in his own name. Because of this disability, it is necessary that for the protection of his interest and the management of his property, he should have a guardian of his person and property. In the light of Section 27 of the Guardian and Wards Act, 1890, and Section 8 of the , Hindu Minority and Guardianship Act, 1956, the general duty of his guardian consists in the doing of acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate. In all the systems of personal law, the father is the natural guardian of a minor during his life-time. Sometimes, the Court appoints as a guardian of a minor, some person who is not a natural guardian.
A banker should take the following precautions while dealing with a minor: **1. Opening an account:** Recently, the bankers discussed and decided over the question whether an account can be opened and operated by a minor alone without the intervention of any guardian. Commercial banks now open deposit accounts in the name of a minor operated upont by himself. Ordinarilly, the balance is confined to a particular maximum and the age of the minor is ordinarily 12 years or above. Two such minors can jointly open such an account, to be operated upon by them jointly.
In another way, a deposit account can be opened in the name of the minor, to be operated upon by his natural guardian or the guardian appointed by the Court. Bankers frame some special regulations in relation to minor's accounts.
2. Facility of negotiable instruments: According to Section 26 of the Negotiable Instruments Act, 1881, a minor may draw, endorse, deliver and negotiate a promissory note, bill of exchange, or cheque so as to bind all parties except himself. Thus, a minor can validly draw a cheque. If he can validly draw a cheque, it follows that the bank would be bound to pay the same and be discharged by making the payment in due course. Thus, on attaining majority, he would be bound by the withdrawals made by him by cheques when he was a minor. As the minor does not bind himself by making, endorsing or negotiating biils or cheques, therefore the banker should not purchase bills accepted by him.
3. Advances: Banks do not and should not provide overdraft or advance facility to a minor. If an overdraft or advance is granted to a minor even by mistake or unintentionally, the banker has no legal remedy to recover the amount from the minor because:
(A) By implication of Section 7 of the Transfer of Property, 1882, the property of the minor cannot be transferred. Hence the assets of the minor pledged with the banker as security for the advance taken by the minor, are not legally available to the banker, because such pledge is invalid in itself.
The banker shall have to return these securities to the minor and he cannot exercise his right of sale of these securities if the minor defaults in repaying the advance;
(B) If an advance is granted to a minor on the guarantee of a third party, such advance cannot be recovered from the guarantor also because the contract of guarantee is invalid on the ground that the contract between the creditor and principal debtor (i.e., minor) itself is a void contract (as indicated earlier, an agreement with a minor is void ab initio). According to Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise

provided by the contract. There fore, the surety cannot be held liable on a guarantee given for default by a minor. Surety's liability is a secondary liability and does not arise, if the liability of the primary debtor does not arise. In the case of Edavan Nambiar vs Moolakai Raman (1957), the Madras High Court also upheld the above view point. The minor cannot undertake a liability upon himself. The liability of surety is ancillary—it materialises if there is a valid obligation on the part of the debtor whose debt or obligation is guaranteed. However, if the contract of guarantee especially provides contrary to the above, the guarantor may be held liable for the debts of a minor. Moreover, instead of guarantee contract, the banker may enter into indemnity contract with a third party who shall indemnify the bank in case the minor defaults in repayment of advances.

4. Loan to partnership firm: According to Section 30 of the Partnership Act, 1932, a minor cannot become a partner in a partnership firm. However he may be admitted to the benefits of partnership with the consent of all partners Within six months after attaining majority, he has to decide whether he shall remain a partner or shall leave the firm. If he decides to sever his connection with the firm (does not want to continue as partner), he has to give public notice in this regard. If he does not give such public notice it must be presumed that he has opted to become a partner in the firm, and then he shall be personally liable to third parties for all acts of the firm done from the date when he was admitted to the benefits of the firm. Banks can give loan to the firms in which minor is a partner.

5. Dealings as agent: Section 184 of the Contract Act, 1872, states, "As between the principal and third persons, any person may become agent, but no person who is not of the age of majority and sound mind can become an agent so as to be responsible to his principal" Thus, even a minor can become agent and the principal shall be responsible for his acts to the third parties. However, minor as agent shall not be liable to his principal. In this context, a minor can act with the banker as agent for his major principal, and all such dealings shall be valid. However, the banker should take a clear written authority letter from the major principal wherein the powers of the minor agent have been specified and defined.

Banking Regulation Act, 1949 : The Act was passed to consolidate and amend the l\aws relating to the banking companies in India. Prior to enactment of this Act, the banking companies were governed by the provisions contained in part XA of the Indian Companies Act, 1913. Howevdr, these provisions proved inadequate in regulating the rapidly growing business of banking institution and their organizational problems. The Act has been amended several times. The most comrechensive amendment was made in the year 1968 through the enactment of Banking Laws (Amendment) Act, 1968. The amendment was made is new of imposition of the scheme of social contral on banks. The Act airmed at snapping the links between industrial hourses and the banks so that particular client or groups of clients are not favoured in the matter of distributin of bank credit and whatever characteristics of the shareholdings, its influence is neutralized in the constitution of Board of Directors and the actual credit decision takes at different levels of bank management'.

The Banking Regulation Act, 1949, as amended up-to-dae is a comprehensive piece of legislation aimed at development of sound and balanced growth of banking busness in the country. It has extensively enlarged the control of the Reserve Bank over the entire industry. It has perhaps taken care of all aspects relating to banking business as observed by Quddus : "Right from the dedinition of the word 'banking' its functions, capital and reserve requirements, licensing and liquidity provisions, banking operations and banks inspection down to the amalgamation of banks and their

liquidation have all been extensively condified. In other words, the structural, finanicial and developmental problems all seem to have taken into consideration in drafting the Act.

State Bank of India : All India Rural Survey Committee recommended in 1954 for the creation of one strong integrated State sponsored, State partnered, commercial banking institutin with an effective machinery of branch spread over the whole country, which, by further expansion (including further but minor amalgamation, where necessary) can be put in a position to take over cash work from non-banking treasuries, provide vastly extended remittance facilities for cooperative and other banks, and generally in their loan operations, in so far as they have a bearing on rural credit, follow a policy which, while not deviating from canons, of sound business, will be in effective consonance with national policies as expressed through the Central Government and the Reserve Bank…….. Thus, one of the basic objectives of establishing such a bank was not only creating the machinery needed for financing the developmental activities but aslso for ensuring that the finance made available goes into the desired direction. In pursuance of this objective, the Imperial Bank of India was brought under public ownership from July 1, 1955 and was concerted into the State Bank of India with the main objective of facilitating the extension of banking in the rural and semi-urban areas. By 1959, eight banks in the erstwhile princely states were also brought under the control and full or near full ownership of the State Bank of India. Ultimately creating seven bank as follows : -

(i) State Bank of Bikaner & Jaipur
(ii) State Bank of Hyderabad
(iii) State Bank of Mysore
(iv) State Bank of Patiala
(v) State Bank of Saurashtra
(vi) State Bank of Travancore
(vii) State Bank of Indore

The State Bank of India togther with its subsidiaties (popularly known as State Bank Group) is the largest commercial bank in India, in terms of branch network, resouirces and manpower. On the basis of the number of its branches, it has the largest office network of its kind the whole world. Settomg. Ot os the pm;u Indian bank which finds a place within the hundred big banks in the world in terms of assets.

Executors and Administrators

Executive and administration are persions who are appointed to conduct the affairs of a person after his death. The executor is apponted by the testator (person making a will) to execute his will aftrer his death, whereas an administrator is apponted by a court for the execution of a will if the executor is not named in the will.

If the testator had executed a will and appointed persons to look after his affairs after his death, the appointees are known as executors. But if there is no such mention in the will or if the person dies interstate (Ec. Without leaving any will) the court may appoint a person to administer the estate of the deceased. ;They are known as administrators.

In the case of executors, their powers and duties are mentioned in the will. The only thing is that the will should be probated, that is, ceretified by competent court as a bona fide document.

In the case of administrators. Wjp are appomted by courts, their powers, duties and responsibilities will be defined by the letters of administration issued by courts.

On the death of a customer, his account it automatically frozen and the banker should not allow further operations. The executor can be allowed to operate the same on production of probate obtained from the court. In the case of an administrator the banker should insist upon the letters of administration issued by the court of competent jurisdiction. In either case the account of the deceased must be closed and a new account should be opened indicating the trust character of the account of the deccased, that is, as executors or administrators of the estate of the deceased.

When the appointees are more than one person they shall have a joint interest in the estates of the deceased. The banker may allow operation of the account by one or more upon the authority in writing by all the executors or administrations. But this authority is revocable and in case of revocation all the executors and administrators should operate the accounts jointly.

Precautionary Measures:
The banker should take the following precaution while dealing with executors and administers :

1. On the death of a customer, the banker must stop payments from his account. The executor should be permitted to operate the accojnt of the deceased after he has obtained the probate from the court. The administrator is authorized to do so after securiting the letter of administration. The banker should examine these documents before the appointed person in permitted to operate the account.
2. When two or more persons are appointed as executors or administrators, they shall have joint interest in the estate of the deceased and this interest is not capable of division. Then they should open a joint account with the bank. In such cases, the bank should obtain clear instructions regarding the operation of the account. One or more executors may draw cheques on the account but a letter of authority signed by all the them stating the name/names of the persons who will operate the account is taken by the banker.
3. The banker should be very cautious in conducting the account of executors administrators so as to prevent them from misappropriating the funds of the deceased.
4. The banker cannot exercise his right of set-off against the credit balance in the executor's personal account in respect of a debtor balance in the account of the deceased.
5. The banker should not permit transfer of junds from the estate account to the personal account of the executor.
6. On the death, insolvency, insanity or regnation of any of the executors or administrators the bank can honour the cheues issued by him and can continue to operate the account, unless otherwise provided in the will.
7. The executor administrator may pledge the property of the testator to obtain an overdraft from the banker. The executor may do so only if he is permitted by the will. Hence the banker should examine the will before granting any loan to the executor or the administration and they must jointly sign the loan document.

Explain the concept of Central Banking.
Today all the countries have a Central Bank, which controls their entire banking system. The first Central Bank was the Swedish Risks Bank established in 1688. The Bank of England was established in 1694 and nationalized in 1946 under Bank of England Act, 1946. There banks were established not to provide direct credit to trade

and commerce, but to provide money to their governments and they were given special privileges over the issue of notes. In course of time the range of their operations widended and they began to render their governments a varicty of services. In the 19th century many other European countries established their own Central Banks. But the current Central Banking is the idea of 20th century and look several decades to mature into the present form. The Federal Reserve Bank of USA was established in 1914. An International Conference on Monctary System was held in 1920 at Brusscls to consider the currency chaos after the First World War. It recommended that overy country having a currency of its own should have Central Bank. Now there is no civilized country which does not possess a Central Bank. In India the Reserve Bank of India Act was passed in 1934 and Bank began functioning from April, 1935 (see. Chqapter 16 for more detailed descusion on RBI).

The name Central Bank is given to that bank which is entrusted with the task of controlling the issue of money and regulating all the other banks of the country. Here the task controlling involves the managing of both expansion and contraction of the volume of money in the country.

Definitions of Central Bank

The Central Bank is defined by various authorities as follows:

RG, Hawtrey defnies Central Bank as lithe lender of last resort.

Kisch and Elvin holds the view that the essential function of a Central Bank is the maintenance of the stability of monetary standard.

Whaw W.A. definews the Central Bank as 'the bank' whose main function is control of credit.

Vera Smith holds as, "the primary definition of central banking is a system in which a single bank has either a complete or a residuary monopoly in the note issue.

Sayers RS claimed as, "the business of a Central Bank is to control the commercial banks in such a way as to promote the general monetary policy of the state".

The above definitions are not sufficient because they do not provide the entire picture and idea of the Central Bank. Thus, it can be defined as, "the strategic level, banking and monetary institutions primarily engaging in controlling, anti regulating the banking and monetary systems of the country for the progress of the economy".

Nature of Central Banking

The basic nature of Central Banking can be enumerated as follows:

1. The Central Bank does not aim at profits but aims at national welfare.
2. The Central Bank does not compete with the member banks.
3. The Central Bank has special relationship with government and with commercial banks.
4. The Central Bank is generally free from political influence.
5. The Central Bank is the apex body of the banking structure of the country.
6. The Central Bank should have overall control over the financial system.

Functions of The Central Bank

Central Banks differe from country to country in their structure and organization, in their policies and techniques. But their functions are very similar. The Central Bank renders the following important functions in almost all countries.

(i) Issuing of notes and regulating the volume of currency.

(ii) Acts as banker to the government.

(iii) Acts as banker to the banks.
(iv) Acts as custodian of Nation's reserves.
(v) Acts as the lender of last resort.
(vi) Functions as National Clearing House.
(vii) Acts as controller of credit.
(viii) Publishes economic statistics and other information.
(ix) Development functions.
(x) Supervises the activities of financial institution.

(i) Issue of notes and regulation of the volume of currency : The Central Bank is legally empowered to issue currency notes. The Central Bank is charged with the responsibility of maintaining price stability, inflations leve, i.e., the domestic value of its money as welll as its external value. The supply of money consists of the legal lender money and the bank money. The Central Bank has the monopoly power of the note issue to regulate the supply of legal tender money. This enables it to impart clasticity to the currency system and to maintain stability in the circulation of money. In Hong Kong the responsibility of issuing currency notes has been entrusted with a private sector bank, viz. Hong Kong and Shanghai Banking Corporation (HSBC).
By the function of note issue the central bank achieves the following merits :

(a) Enhance the public confidence on the monetary system.
(b) Maintaining uniformity in the monetary system throughout the country.
(c) Flexibility in the monetary system, By the function of note issue at desired level.
(d) Credit creation can be effectively controlled. The sole right of note issue enables the Central Bank to regulate the creation of credit by commercial banks and adjust the supply of money to the demand for it.
(e) Maintaining the internal and external value of money.

The Central Bank follows different systems of note issue according to the currency regulations. The different systems of currency are,

(a) Fixed fiduciary system
(b) Minimum fiductary system
(c) Proportional Reserve system.
(d) Foreign exchange reserve system.
(e) **Minimum Reserve System :** Whatever may be the system three basic principles are to be followed. They are (i) Uniformity (ii) Security and (iii) clasticity. The currency issued must be uniform and a single authority must, be vested with the power of note issue to achieve uniformity. There must be security for the currency without any dangers of over isse. Public must have confidence in the currency, which to some extent, depends upon the gold and foreign exchange reserves it holds. At the same time the currency supply must be clastic. The Central Bank must be able to expand or to contract the supply of currency according to the changing needs from time to time.

(i) **Banker to the Governement :** The Central Bank acts as the banker, financial agent and advisor to the overnment. The surplus money of the government is kept with the Central Bank. It lends money to both central and state governments. It helps the government to tide the time gap between their expenditure and collection of taxes. The Central Bank is usually required to make temporary advances to the

government in anticipation of collection of reventues. These advances are known as ways and means advances in India and are made for short periods. The Central Bank also undertakes to provide the government with necessary foreign exchange for making payments abroad.

It is necessary that there should be close co-oeration between the Central Bank and the government. The government is the ultimate authority for laying down the broad monetary policies of the country and Central Bank is the institution for carrying out of such policies.

The Central Bank as a fiscal agent to the government accepts loans and manaes public debts, receives taxes and other payments from the public. The government bonds and treasury bills are issued by the Central Bank on behalf of the government.

As the financial adviser, the Central Bank provides valuable advice to the government on important financial matters like, foreign exchange policy, commercial policy, raising of funds from market, etc.

(ii) **Banker to the banks :** The Central Bank Acts as the bankers bank. As such it performs the following functions :

Custodian of cash reserves of commercial banks. The commercial banks of the country are required to keep a certain percentage of their deposits with the Central Bank. It secures the advantage of centralized cash reserve. In India the Central Bank is authorized to vary these reserve requirement within certain limits. Such cash reserves with the Central Bank has the following advantages.

(a) The centralization of cash reserve is a source of great strength to the banking system of the country as it strengthens the confidence of the public.

(b) Centralised reserves can be used effectivelyu and quickly in times of emergency.

(c) This ensures liquidity and import econmy in the credit structure of the country.

(d) These reserve promote liquidity of commercial banks as they enable the Central Bank to underrate rediscounting of bills on a more extensive scale for the purpose of meeting the requirements of the money market.

(e) The Central Bank can control credit by varying the cash reserves that commercial banks should keep with it.

(iii) **Act as custodian of National reserves :** Centtral Bank is the custodian of nation's gold and foreign exchange reserves. Previously, to some exten, the value of a currency depends upon the gold reserves or foreign exchange reserves held as the backing for the courrency. As such, it is the responsibility of the Central Bank to maintain sufficient reserves and to prevent their cepletion. The Central Bank manipulates the bank rates and takes other steps to conserve the reserves of gold and foreign exchange. Some Central Banks have absolute powers to control the foreign exchange reserves and to licence the various uses to which the foreign exchange reserves and to licence the various uses to which the foreign exchange is put to use. In modern times, the foreign

exchange control has become the essential function of the Central Bank.

(iv) Acts as Lender of last resort : The Central Bank acts as the lender of last resort and as the bank of rediscount. Rediscounting can be defined as conversion of bank credit into Central Bank Credit. The commercial banks approach the Central Bank for its financial needs as it is the lender of the last resort or the ultimate source of finance. It lends to the commercial banks by rediscounting the cligible bills. The rediscounting facilities given by the Central Bank impart clasticity and liquidity to the entire credit structure of the country. It helps the commercial banks in a big way to prevent them from bank failures. But its assistance is limited only to the banks which suffer from technical insolvency and not to those unsound and really insolvent banks.

Moreover, a commercial bank is not entitled to financial accommodation simply because it has elighble paper or approved securities. Unless it is conducting its business according to sound banking principles, the Central Bank reluses accommodation. Thus, the Central Bank is able to control credit while discharging the function of lender of last resort. The Central Bank is also regarded as performing the function of last resort when it grants accommodation to the government in times of monetary stringency.

(v) **Functions as National clearing house :** The Central Bank acts as the national clearing house. The maintenan ce of accounts by all commercial banks with the Central Bank enables it to settle iner-bank indebtedness.

A clearing house is an institution where interbank claims, i.e., claims of banks against one another are settled. The net balances or differences called the clearing balances are settle by more transfers claims. The Central Bank acts as a bank of clearance, settlement and transfer and establishes clearing houses in the important cities and towns in the country. They are housed in the premises of the Central Bank administered by it or at their Agent banks.

Clearing houses are established in the important cities and towns of a country by the respective local banks. If the Central Bank has no offices of its own, the clearing houses are I housed in the premises of the agents of the Central Bank.

(vi) **Act as the controller of credit :** The Central Bank functions as the controller of credit in the most important function of the Central Bnk. The credit creation by the commercial banks has a direct impact on the economy. If the banks expand the credit limit that leads to inflation and it they unduly contract credit it leads to deflation. Thus the central bank is empowered to control the credit creation of the commercial banks. The commonly used methods of credit control are :

(a) Bank Rate Policy
(b) Open Market Operations
(c) Variation of cash resrves
(d) Credit rationing
(e) Variation of margain requirements

(f) Regulation of consumers credit
(g) Moral suasion
(h) Direct action
(i) Selective credit control.

By adopting these methods, the Central Bank controls both the quantity and quality of credit created by the banks.

(vii) **Publishes economic statistics and other information :** The Central Bank regularly collects and published the statistics regarding various economic activities of the government, banking system, etc. Further it provides useful information regarding government policies.

(viii) **Development functions** : The Central Bank Acts as the catalyst of economic growth of the country. It acts as an agency of economic growth. It renders various developmental functions such as.

   (i) Provision of credit facilities to agricultural industry and other ority sectors through commercial banks and co-operative banks.
   (ii) Expansion of banking facilities in the country.
   (iii) Maintaining price stability in the country.
   (iv) Mutiguting the effects of trade cycles by its effective monetary policies, etc.

The responsibility of the Central Bank is increasing every day and its functions are expanding. The well administered central banking functions are necessary for all the countries especially for the developing countries to maintain price stability and economic growth. However, the into separate development financial institutions, such as IDBI and NABARD and investment institutions like UTI over a period of dine. This like regulating money supply, ensuring price stability and protecting the external value of its currecy.

Objectives of RBI

The Reserve Bank of India was established in order to fulfil the following objectives –

(1) To maintain stability in the internal and external value of Indian rupee.
(2) To establish co-ordination between money and credit in the country.
(3) To act as banker to the government.
(4) To regulate banking system in the country.
(5) To control and regulate credit and foreign exchange.
(6) To arrange agricultural finance.
(7) To establish monetary relation with foreign countries.
(8) To collect and publish statistical data relating to money, credit and banking business.

Functions of Reserve Bank of India

There are types of functions of Reserve Bank of India.

I. Functions as Central Bank :

(1) **Note-Issue :** The sole power of issuing the bank-notes is vested with the Reserve Bank of India in our country. Except one rupee

note, which is issued by the Government of India, all the other notes upto 500 rupee denomination, are issued by Reserve Bank of India, under Section 24 of the Reseve Bank of India Act.

(2) Reeserve Bank as Government Bank : As per Section 20 and 21 of the Reserve GBank if India Act, the Reserve Bank of India functions as the Government's Banker' and takes up the following functions :

(i) **Remitting money to foreign Countries on Government order :** As a government banking the Reserve banker, the Reserve Bank of India manages to transfer the amounts to the overseas on the orders of the government.

(ii) **Transferring of Government Funds :** O behalf of government the Reserve Bank of India also effects the transfer of the various funds.

(iii) Previding for Foreign exchange for Government : The Reserve Bank of India also provides for the foreign exchange to the government for the state activities.

(v) **Accepting and making payments for Government :** The Reserve Bank of India receives all the payments on behalf of the government. It has not to pay any interest on the government deposits.

(vi) **Arranging the public loans for Government :** The Reserve Bank of India manages and provides the short term public loans for Central Government.

(vii) **Advances to the state government :** In case of emergent needs, the Reserve Bank of India also provies for short terms loans in the state government.

(viii) **Acting as Government's Financial Advisor :** In connection with vario0us national and international problems, the Reserve Bank of India extends as consultation to the Central and State Government.

(3) Reserve Bank of Banker's Bank : The Reserve Bank of India has been granted some very special rights and privileges in order to establish a sound banking system in our country. Right from the setting up of the banks upto their winding up, all the functions are performed with the consent of Reserve Bsnk of India. The following are some such important functions as are performed by the Reserve Bank of India.

(i) **Obtaining licences regarding setting up :** Every bank set up in India, has to obtain licence from Reserve Bank of India. Before granting of the licence, Reserve Bank of India investigates about the financial stability of the applying bank, whether its incorporation has been in the interest of the depositors or not.

(ii) **Management and direction :** The Reserve Bank of India has power to internene sufficiently in the management and control of the banks. If any director of some bank does

something undue, he maybe removed from his office by the Reserve Bank of India.

(iii) Granting permission for branch expansion and shifting : Without the permission of Reserve Bank of India, neither any bank could open its new branch nor could transfer its branches from one place to the other.

(iv) Carrying on Inspection : In order to strengthen the Indian banking system, Reserve Bank of India is empowered to inspect any bank. Inspection can be taken up anytime without any prior information.

(v) Checking up of final accounts : In our country every bank is required to prepare its annual accounts for each year, as closing on 31st March, and three copies of its care to be submitted tyo the Reserve Bank of India.

(vi) Keeping liquidity Reserve : Every bank is required to keep in deposit some percentage as part of its deposits with the Reserve Bank of India. On such deposits, the Reserve Bank of Indiadonesn't give any interest.

(vii) Working as final grantor of loans : As banker's bank, the Reserve Bank of India extends the financial help from time-to-time to scheduled banks in case of need. Besides giving direct loans or against the mortgage of the approved securities, it also makes full deductin of the bank's bills.

(viii) Working clearing house to banks : For clearing the mutual payments and dues, Reserve Bank of India acts as the clearing house of the banks. After the setting-up of the Reserve Bank of India, every year the number of clearing houses is increasing in the country.

(4) Credit Control : In order to mobilize properly the monetary system of the country, Reserve Bank of India acts as a central bank for the credit control. For controlling credit by the Reserve Bank of India, several differenty dev ices are used.

(5) Foreign exchange system : On account of the increasing significance of the foreign currency for economic development and to check up all the unwanted acts in this sphere, Reserve Bank of India as opened with it, a credit control department.

(6) Compilation and publication of data : Reserve Bank of India also arranges to collect facts and figures pertaining in the Indian economy and publish them for the use and benefit of various classes of Indian masses.

(7) {roviding agricultural credit : The Reserve Bank of India has separately set up an agricultural credit department for the purpose of conducting research pertaining to agricultural problem, bringing co-ordination among of agricultural credit, and extending consultations regarding agriculture.

(8) Providing for training of banking employees : In order to increzsse the efficiency in the working of the banking employees and to provide better services to the customers, the Reserve Bank of India also provides for the training of the employees of the Indian banks.

II. Functions as ordinary Bank :

(1) Purchase, sale and re-discounting of agricultural bills : The Reserve Bank of India also works as purchaser, seller and re-discounter for the agricultural bills maturing within a maximum of 15 months period, as drawn up within India. It is the work of an ordinary bank

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(2) Purchase, sale and re-discounting of commercial bills : Apart from the agricultural bills, the Reserve Bank of India also acts for the purchase, sale or re-educounting of the commercial bills maturing within a maximum period of 90 days.

(3) Accepting securities without interest : The securities without interest, are also seccepted by the Reserve Bank of India from the private institutions, banks and central and state governments.

(4) Acquiring the loans : The Reserve Bank of India also procure loan from any schedulted baqnk of the country or from any central bank of some other country, in case of need, for a maximum period of 90 days.

(5) Granting loand to the central and state government : The Reserve Bank of India also grants loans to the central and state governments, in case of need, on the security of investment, primotes, baills of exchange and valuble metals, bullion etc. Such laosn are usually granted for rountine activities, for a maxiumum period of 90 days.

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Banking sector is the most important segment in the Financial system of any country. As most of the economic activities are supported and provided funds by the banks, efficient and profitable functioning of banks are indicators of healthy and vibrant economy of a country. The supervision of banks is generally entrusted to the Central Bank in every country. In India, supervision of commercial banks is carried out by the Department of Banking Supervison (DBS) of RBI. The supervision of co-operative banks and Regionbal Rural Banks is carried out by NABARD RBI also couducts inspection of Development Financial Institutions like NABARD, IDBI, etc., and also of registered Non-Banking Financial Companies.

Obejctive of Supervision : The primary objective of supervision is to ensure safety of funds placed by depositors with banks and to retain the confidence of depositors, investors and clients in the banking system. Therefore, the objective of supervison is also to ensure the solvency and liquidity of every bank. It also ensures that banks are following, the instructions and directives of Central Bank issued on various aspects of banking activities. It is required to identify deficiencies and irregulaties in the working of banks. In short, the objective of bankinhg supervision is to ensure the overall financial health, liquidity, solvency, and profitable operations of every bank.

Legal Framework for Supervision : The legal framework for banking supervison is provided by the Banking Regulation Act, 1949, Section 35 of this Act, empowers Reserve Bank of India to conduct supervision/inspection of Commercial

Banks to ensure that banks are operating in a sound financial system and the interest of depositors are not jeoperadised by the banks. The supervision/inspection of Co-operative Banks and Regional Rural Banks are conducted by NABARD under the same section of Banking Regulation Act, 1949. Inspection of Non0Banking section 45N of RBI Act.

Method of Inspection : The Reserve Bank normally conducts two types of inspection viz., (i) on-site inspection and (ii) Off-site surveillance.

(i) On-site of Inspectin : Under this system, the Reserve Bank sends its team of officers to various banks (Head Office, Zonal Offices, Advances accounts, Balan ce Sheet Verification, examination of Investment made against doubtful assets and the true financial position of the bank has been revcaled in the final accounts. The team suggest measures to improve the operational efficiency of the bank and to cut down wasteful expenditure.

(ii) Off-sitre Survellance : The purpose of off-site surveillance is to find out on-going basis to ascertain whether the bank's financial condition is sound; whether the bank is maintaining requisite CRR and SLR; whether the bank is complying with policy measures announced by RBI from time to time etc. These aspects are verified by calling for periodical statements and Returns from Banks. Since this type of examination is conducted away from the banks whose affairs are being analysed and in the offices of RBI, it is called off-site inspection or surveillance. This system introduced in 1995 serves as an early warining signal to RBI about the impending deterioration in a bank's affairs.

Type of Inspection : Prior to 1991, the Reserve Bank was conducting two types of inspection, viz., Financial inspection and Annual Financial Reviews. However, presently RBI is conducting Annual Financial Inspection of Commercial Esanks mainly with a view to assess the true financial strength of the bank. The is done under a system known as CAMELS which stand for Capital Adquacy, Asset Quality, Management, Earning, Liquidity and system. This system is mostly adopted while carrying out on sight inspection.

Board for Financial Supervision : BFS from 1994 superviion and inspection of all financial institutions, except cr-op Banks and Regional Rural Banks were brought under the control of RBI. Within the co-op banks supervion and inspection of urban co-op Baqnks vest with the jurisdiction of Reserve Bank.

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` Inspection of Commercial Banks and conduction by the Department of Banking Supervision (DBS). Inspection of registerdd Non-Banking Financial institution is conducted by Deopartment of non-banking financial Institutions. Inspection of Development Financial Institutions like IDBI, NABARD, etc., is conducted by the Financial Institutions cell. The Urban Banks Depoartment and Exchange Control Department carry out inspection on the operations of Urban co-op banks and foreign exchange operation of commercial banks respectively. The apart, these departments particularly DBS receives a number of periodical returns and statement from the bank relating to their operational and financial strength.

The various departments report their findings ascertiained through inspection and offside monitoring system to the Board for Financial supervision (BFS) which is the apex/superme body to monitor and give direction to the various financial institution. The BFS meets once a month reviews the reports of various departments and issue directions to take corrective measure to improve the financial help of the concerned institutions.

The BFS consiste of eminent personalities in the field of financial operation, accounting practices, economic matters, etc., This body is headed by Governor of RBI and two of its Deputy Governors are also members of BFS.

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Training Facilities on Banks

Governally jobs in the banks are customary and can be understood with a few days practice but to revolutionarize banking services and mae them more efficient it is necessary to provide suitabld training. Refresher courses shoul;d be arrangd for higher officials after a gap of every 5 yearsare that their knowledge of new experiments, new activities and procedures keeps on improving and by implementing them in the bank the working of the bank also improves.

Indian Banking Institute : In Indian there is a banking institute which conducts examinations every year for banks. This examination is held in two parts and a certificate is given to successful candidates. These examinations are recognized by every bank in India who often grants provotion to the bank employee only on the basis of these examinations. Roughly trwo lakh people sit in these examinations every year and question papers related to subjects like banking law and practice economics, accountancy, business geopgraphy, commercial law, financial principles, foreign teade and public finance are given.

The holding of such examinations has drawn criticism from various sectors. It certainly is surprising that the institutions that arranges for training of such large number of people has very few permanent employees. In addition to a few clerks a secretary takes care of this and at the time of examinations few temporary employees are appointed. The reason is that most of the officers of the institution are not on roll and all are otherwise very busy people. Still high officials who are qualifiedenough are taken on roll it is impossible to bring improvement in the working of such an important organization.

Reserve Bank College : Indian banking institution is only a testing organization and not a training organization. To train the different categories of officers working in banks in different areas the Reserve Bank has extablished a training university in Mumbai. This institution gives practical training to high officers of commercial banks and second grade officers. Other than practical banking training is also given in industrial finance and foreign investment which includes the officers

related to this field. This course is for eight weeks. The level of the training institution of the Reserve Bank is very high and as training programmes are benefitting many. The problem is that very few people are included in these programmes. Possibly inspired by this difficulty the State Bank of Hyderabad has opened its own college in which 40 officers of the bank are trained annually.

National Bank Management Institutes : As soon as the Indian banks were made public the Reserve Bank set up a committee chaired by the then deputy governor of the reserve bank, B.K. Adaarkar. Tbhe aim of this committee was to give suggestions regarding banking training in India. On the suggestion of the committee a Bank Management National Institute WAS SET UP IN 1969. The main functions of the institute are as follows :

1. Arrange training for the senior officials of the bank.
2. Conduct research on problems faced by banks.
3. Advise banks regarding various problems faced by them.
4. To arrange for competent and traine4d employees by arranging post graduate education on banking.

The Bank institute organizes workshops and discussions on subjects like agricultural finance, finance for small scale industries, customer services, credit deposits etc, and trains for the same.

The greatest drawback of the National Banking Management Institute is that the training programmes organized by it are very expensive and dominated by English. They lack Indian point of view and programmes related to finding solutions to problems in Indian Banks.

Government should take steps to Indianize the Bank Management Institute and make its syllabus more relevant and useful in the Indian context.

Employer – Employee Relations Are Made Cordial : In the past few years the relations between the officers of Indian banks and its staff has turned acrimonious and this spread indiscipline and inefficiency like a disease in banks. This bitterness is generally on account of salary, allowances, working conditions and promotions. Now, bank courts decide about salary, allowances and conditions of work and the decisions are compulsorily to be followed by the banks and its employees. But disputes often arise because of promotion and transfer. Joint committees of representyatives of bank employees and share ho9lders should be constituted to deal with disputes of promotion and transfers and othr related matters. These councils can draw a code of conduct for officers and employeesand rules related to various other problems. The observance of this code of conduct and bank rules should be made compulsory for both groups so that there is no chance of any dispute or acrimony to arise. These joint councils should be given wide spread powers to deal with all possible disputes and its decisions should be accepted by both parties. It would be best if some neutral people acceptable to both parties can be appointed in these councils.

Banking Policy : Indian government from time to time keeps making announcetments regarding expansion, developments, image etc. of the bank but so far no document regarding complete banking for bank officers and should be published by the government.

Deseribe the control of staff in Banks :

The process of controlling staff/officers in banks is done by different departments under the rules and regulations decided by banks. The employees/officers working in a branch are monitored by the Branch Manager where as the control of the Branch offices lies with the regional offices and that of the regional offices with the circle offices and the absolute control of the entire banking system is in the hands of the Central Office of the bank. For this special powers have been delegated to different departments. Using these powers these departments control the departmental staff. In order to implement t the policies framed by the Board of Directors, the Boarad or the Chairman delegate some of their responsibilities to their Assistant officers there by maintaining the control system. The Board of Directors delegate some of its powers like sanctioning of loans and advances, appointmen t of employees, promotion and transfer ect. To the General Manager. He is expected to exercise his powers in an impartial and fearless manner. It acts like a link between the senior officers and the staff.

Generally, the General Manager monitors whether the departmental offices and Branch Managers are following the suitable policies in all matters especially those related to loans and advances. He also endeavors to see that unnecessarily risks are not taken and non recoverable loans are barc minimum. He also makes efforts to see that there are no irregulatities, frauds, forgery etc and that\ adequate efforts are made to stop them or to keep them as few as possible. The policies made by the General Manager are followed by the Central office and the Branch offices.

Deputyh and Assitant General Manager : It is not possible for the General Manager to execute all the tasks and discharge all responsibilities single handedly. Thus for his help normally many Deputy and Assistant Genral Managers are appointed. Their numbers are large especially in bigger banks. Every Deputy and Assistant General Manager is delegated with some powers of the General Manager and they are assigned different departments and are made the Head of this department. Also, the Deputy and Assistant Managers can inspect the functioning of the branches of a particular area on behalf of the General Manager or can take charge of the working of some particular department in the Head office.

Regional Manager : For the convenience of administration and better supersion bigger banks appoint banks appoint Regional Managers. Their function is to look after the Branches in their regions and to a certain extent sanction loans and advances. They exercise complete control on the branches and are totally responsible for their working. They need to make all efforts to establish co-orgaination between the Head Office and Regional Office.

Branch Manager : Next in order to the Regional Manager is the Branch Manager. A Branch Manager is the local representative of the bank. He is the person who comes in maximum direct contact with the clients. Actually most of the business of the bank depends on efficiency, personal behavior and relations of the Branch Manager. From this point of view a Branch Manager should be an experiences person who can bring glory to the bank by gaining the faith of the customers towards the bank and inculcate in the employees loyalty towards the bank.

Duties of A Branch Manager : The dutie4s of a Branch Manager can be studies from two points of view – 1. Duty towards the head office and, 2. Duty towards the clients.

1. **Duties Towards The Head Office :** Head office is the place which issues orders related to policy matters to all branches and where information is exchanged. Thus it is the duty of a Branch Manager that he follows in Toto all orders of the Head Office and keeps it informed about the progress of the branch especially about credits and loans and advances. It a problem has to be solved then the Branch Manager should seek guidance from the Head Office.

Under the banking reulations the Branch Manager has to send several periodical reports to the Head Office. On their basis the Head Office prepares its reports and sends to the Reserve Bank of India. Therefore it is the duty of a Branch Manager to timely send the required reports and other information to the Head Office.

2. **Towards the Customers :** The Branch Manager is the last resort who solves various problems of the customers.

Write about Merchant Banking in India.

Merchant banking services, in India, were started only in 1967 by National Grinadlays Bank followed by Citi Bank in 1970. The State Bank of India was the4 first Indian commercial bank to set up a separate merchant banking divisions in 1972. Later, the ICICI set up its merchant banking devision in 1973 followed by a number of other commercial banks like Canara Bank, Broada, Bank of India, Synediate Bank, Punjab National Bank, Central Bank of India, UCO Bank, etc. The FERA regulations in 1973, which required a large number of foreign companies to dilute their share holdings in India gave a boost to the mercdhant banking activities in India. Since then, a number of development banks, and financial institutions such as IFCI and IDBI have also enteed this field. Some leading banks have floated wholly owned subsidiaries for carrying out these activies. Private brokers and financial consulotancy firms have also been quite active in the field of merchant banking They infact, have given a tough competition to the commercial bank in the operations of merchant banking. Thus, at present merchant banking services in out country are provided by the following types of organizations :

(i) Commercial bnaks and their subsidiaries.

(ii) Foreign banks including National Grindlays Bank, Citi Ban ks, Hongkong Bank, etc.

(iii) All India Financial Institutions and Development banks such as ICICI. IFCI, IDBI.
(iv) State Level Financial Institutions, such as State Industrial Development Corporations (SIDC's) and State Financial Corporations. |
(v) Private Financial Consultancy Firms and Brokers, such as J.M. Financial and Investment Services Ltd., DSP Financial Consultatns. Enam Financial Consultants, Kotak Mohindra, Ceat Financial Services, etc.
(vi) Technical Consultancy Organisations.
(vii) Professional Merchant Banking Houses, such as VMC Project Technologies.

**Mercant banking in India can be categorized infour broad sections : **

1. To provide Long-term source of funds, required by the corporate sector. The merchant banker primarily came into being as corporate countsellors for restructuring base of capital, the reafter for issue management and under writing ot the same.
2. Project counseling which includes credit syndication and the working capital.
3. Capital structuring.
4. Portfolio management.

The buoyancy in the capital market in 1980s creatd a lot of scope for merchant banking activities in our country. The year 1985 wa an epoch-making year in the history of merchant banking when a large number of issues were oversubscribed by several times and the importance of marchant banking activities was made evident in managing issues and their underwriting. The deregulation and liberalisatiojn of the industry in India has accounted for changes in the Financial sector. With the passage of time merchant banking activities have changed in line with the changing need pattern of the enterprises in the wake of economic development.

Since August 1990, merchant bankers engaged in issue management, corporate advisory services, underwriting and portfolio management have to obtain authorization from the Securities and Exchange Borad of India (SEBI) after meeting the requirements of capital adequacy norms. In 1993, there were 568 merchant bankers in our country out of which 312 were authorized by the Securities and Exchange board of India. The number of registed merchant banakers with SEBI increased to 422 at the end of August 1994. The total number of merchant bankers in all categories increased to 1163 by the end of 1997-98. As the liberalization policy continoues and the financial market is expanding rapidly, the future for the country's merchant bankers seems to be buoyant. But their role are changing with the change in the nee3ds of the customers.

Merchant Banking Regulations

SEBI (Mercant Bankers) Regulation Act, 1972 definces a merchant banker as any person who is engaged in the business of issue management either by making arrangements regarding sellings, buying or subscribing to securities or acting as

manager, consultant, adviser or rendering corporate advisory service inj relation to such issue management. At present no organization can act as a Merdhant banker without obtaining a certificate of registration from the SEBI. However, it must be noted that a person/organization has to get himself registered under these regulations if he wants to carry on or undertake any of the authorized activities, i.e., issue management assignment as manager, consultant, advisor, underwriter or portolio manager. To obtain the certificate of registration, one had to apply in the prescribed form and fulfil two se4ts of norms (i) operational capabilities and (ii) capital adquancy norms.

Classification of Merchant Bankers

The SEBI has classified Mercant Bankers' under four categories for the purpose of registration :

1. **Category I Merhant Bankers** : These merchjant bankers can act as issue manager, advisor, consultant, underwrite and portfolio manager.
2. **Category II Merchant Bankers :** Such merchant bankers can act as advisor, consultant, underwriter and portfolio manager. They dannot\ act asd issue manager of their own but cfan act co-manager.
3. **Category III Merchant Bankers :** They are allowed to act as underwriter, advisor and consultant only. They can neither undertake issue management of their own nor they act as co-manager. They can not undertake the activities of portfolio management also.
4. **Category IV Merchant Bankers :** A category IV merchant banker can merely act as consultant or advisor to an issue of capital.

Capital Adequancy Norms

SEBI has prescribed capital adequacy norms for registration of the various categories of Mercant Bankers. The capital adequacy is expressed in terms of minimum in terms of minimum net worth, i..e., capital contributed to the business plus free reserves. The following are the capital adequacy norms as laid down by SEBI.

Category of Merchant Bankers	Minimum Net Worth
Category : I	Rs. 1 crore
Category : II	Rs. 50 lakhs
Category : III	Rs. 20 lakhs
Category : IV	Nil

Registration/License Fees

The merchant bankers have to deposit registration fees a below :

Category	Fees Payable for first 2 years Rs.	3rd year Rs.	Total Fees Rs.

Category : I	2.5 lakhs each year	1 lakh	6.0 lakhs
Category : II	1.5 lakhs each year	0.5 lakhs	3.5 lakhs
Category : IIII	1 lakh each year	0.25 lakhs	2.25 lakhs
Category : IV	5,000 each year	1,000	0.11 lakh

The regtistration/license fees for trhe merchant bankers is valid for three year and has to be renewed subsequently thereafter every three years. For renewal also the same applications form which is meant for new registration has to be submitted. Thje renewal fees is as under :

Renewal Fees

Category	Fees Payable for first 2 years Rs.	3rd year Rs.	Total Fees Rs.
Category : I	1 lakhs each year	0.2 lakh	6.0 lakhs
Category : II	1.5 lakhs each year	0.5 lakhs	3.5 lakhs
Category : IIII	1 lakh each year	0.25 lakhs	2.25 lakhs
Category : IV	5,000 each year	1,000	0.11 lakh

The table below presents the functions, minimum capital requirement and registration fees payable for each category of merchant bankers :

Category	Function	Minimum Net Worth Rs.	Total Fees Payable Rs.
I	Issue manager/lead manager/co-manager advisor, consulant, under writer, portolio manager	1 Crore	6 lakhs
II	Co-manager, advisor, consultant, underwriter, portolio manager	50 lakhs	3.5 lakhs
III	Advisor, consultant and underwriter	20 lakhs	2.25 lakhs
IV	Advisor/Consultant	Ni.	0.11 lakhs

Government Policy

The Government issued policy guidelines for merchant bankers to ensure sufficient physical infrasruture, necessary expertise, good financial standing professional integrity and fairness in their transactions. The merchants bankers have to be competent to serve the investors also

On Ist March, 1993 new policy guidelines have been issued by SEBI for the merchant bankers to ensure greater transparency in their operations and to make them accountable so as to protect the investor’s interest. The guidelines relate to pre-issue

obligations, underwriting, advertisements and post-issue obligations of the merchant bankers.