

“Shortcomings of Banking Sector in India”

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The term “**SHORTCOMING**” means Flaws in anything or any system.

CAMBRIDGE DICTIONARY: - The term “SHORTCOMING” means a fault or failure to meet certain standard.

MERRIAM WEBSTER: - “shortcoming” means a state of being flawed or lacking .

So, SHORTCOMING can be said to be a weakness or failing of deficiency.

DEFICIENCY¹ means any fault or imperfection or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be done by a person in pursuance of a contract or otherwise in relation to any service **SECTION 2 (1)(g) of CONSUMER PROTECTION ACT,1986.**

A number of laws from time to time, has been given and examined to reach to a conclusion that whether there had been any shortcoming or deficiency in the services of the bank or not. The different acts and rules, which are relevant for the banks, are under as:-

1. **Indian Contract Act,1872**
2. **Negotiable Instruments Act,1881**
3. **Bankers Book Evidence Act,1891**
4. **Reserve Bank of India,1934**
5. **Banking Regulation Act,1949**
6. **Companies Act, 1956**
7. **Deposit Insurance and Credits Guarantee Corporation Act,1961**
8. **Limitation Act,1963**
9. **Banking Companies (Acquisition and Transfer of undertaking) Act,1970**
10. **Regional rural banks act, 1976**

Here is given a few important cases in which shortcomings of services by banks has been proved by courts, national commissions and state commissions.

• ***DISHONOUR OF CHEQUE***

IN KAUSHAL KUAMR SAHU VS ICICI Ltd²

In this case, the court held that even after having knowledge of virus in computers, officers and officials failed to discharge their

¹ M.L. Tannan, Tanna Banking Law and Practice

² 2009 (1) CLT507 (Chattisgarh)

duty and continued obeying the wrong reports given by the computer. Sufficient funds were available in the account of complainant. Bank took the plea that there was virus in the computer system, resulting into false information output. Due to this, the good will of complainant suffered by dishonour of cheque. State Commission held that the compensation of Rs 5000 to be awarded to the complainant.

- **DELIVERED CONSIGNMENT CONTRARY TO THE INSTRUCTIONS OF CUSTOMER**

IN CANARA BANK VS SUJAG INDIA PVT Ltd³

The Bank delivered a consignment of woollen carpets to a foreign buyer W/O payment. Commission held that the inescapable conclusion is that Bank acted in contrary to the specific instructions of the complainant which is the clear deficiency of service having result as non-payment by the foreign buyer.

- **UNAUTHORISED ISSUE OF PASSBOOK**

IN PNB VS RUPA MAHAJAN PAHWA⁴

³ 2015 (2) CLT 129 (NC)

There was a joint saving bank account. Bank issued a duplicate passbook on the letter of authorisation by one of the two account holders. Letter of authorization was W/O attestation of the signature of the bearer. The commission held the Bank negligent and awarded the compensation of 50,000 RS which shall include the cost of litigation.

- **RETAINED CHEQUE FOR A LONGER PERIOD**

STATE BANK OF INDIA VS P. MURUGAN⁵

In this case, Bank kept the cheque with them for unreasonably long period of time of 21/2 months. Commission held that Bank has failed to advance any explanation as to why they retained this cheque for such a long period of time. Therefore bank is clearly deficient in services towards the complainant.

- **WRONGFULLY DEDUCTING PREMIUM OF HOUSING LOAN INSURANCE.**

SBI VS NARINDER KAUR & ANR.⁶

In this case, SBI sanctioned house loan to the husband of complainant. One time premium of SBI life insurance was deducted from the

⁴ 2015 (3) CLT 110 (NC)

⁵ 2016 (3) CLT 404 (NC)

⁶ 2015 (3) CLT 85 (NC)

loan amount. After death of the loanee, SBI rejected the proposal form because of the non-furnishing required documents. Commission held that both SBI Life and SBI are deficient in service. Life insurance from SBI life was requirement of SBI and not of borrower. It was only an additional security in the hands of the lender. Having deducted the full premium, SBI was under an obligation to expeditiously meet all requirements of the commencement of the insurance cover.

- ***DIFFERENCE IN AMOUNT IN BANK LEDGER AND PASSBOOK***

MANAGING DIRECTOR, THE HAZARIBAGH CENTRAL COOPERATIVE BANK LTD VS SURESH YADAV⁷

IN THIS CASE AMOUNT WAS SHOWN TO BE DEDUCTED in bank ledger and not in bank passbook. No withdrawal can be made W/O passbook. Bank pass book is an authentic document for an account holder .The bank ledger is a bank record. There is an element of trust B/W bank and customer. So commission held that it is a clear case of deficiency in services on the part of the bank.

⁷ 2015(2) CLT 545 (Jharkhand)

- ***OF CHEQUE IN TRANSIT***

STATE BANK OF HYDRABAD AND ANR. VS T. RANGARAO & ANR.⁸

In this case cheque was lost in transit. No intimation was given to complainant by bank whether the bank is liable to give entire amount mentioned in cheque to complainant or they should be held liable for payment for deficiency in services only. Commission held that bank can't be made to pay whole of the mentioned amount. As a matter of principle, bank should be made to pay only compensation for deficiency in services.

- ***FAKE PROMISE REGARDING RATE OF INTEREST BY BANK***

V.K. GANDHI VS CENTRAL BANK OF INDIA⁹

In this case bank promised higher rate of interest than the effective rate of interest according to RBI guidelines, on FDR of NRI customer. On maturity, bank refused to pay higher interest on the plea that it was an inadvertent mistake B/Z internal audit of the bank did not corrected this mistake for a period over 36 months. Bank enjoyed the money of complainant for a considerable duration. Commission held that it was clearly

⁸ 2015 (4) CLT 303 (NC)

⁹ 2015 (7) CLT 307 (NC)

a deficiency in services and an amount of 3 lakhs in lump sum for loss incurred by the complainant.

- ***BANK NOT INFORMED ABOUT DEDUCTION OF TDS***

PREMKUMAR AND OTHERS VS PNB¹⁰

Under Income Tax Act, 1961, it is clearly provided that the respondent bank was required to deduct the income tax and hand over the form 16-A year wise to the depositor from whom the income tax is deducted as TDS. The respondent bank has failed to do its statutory duty and commitment towards the depositors. It was definitely a deficiency in the services on the part of respondent bank not to issue form 16/A to the appellants.

- ***ILLEGALLY SOLD THE SHARES WITHOUT CONSENT***

U. BHIKAMCHAND K. & B NRMAL KUMAR JAIN v/s HDFC BANK Ltd..¹¹

In this case, complainant took an overdraft loan facility from the respondent bank. According to section 177 & 176 of I.C.A. 1872, the holder lien may sell the things pledged only on giving the pawnor reasonable notice of the sale. But in this case,

bank did not give reasonable notice to the complainant regarding sale of the shares. Commission held that the respondent bank committed illegality in conducting the sale of the shares without consent of the appellants and without giving a reasonable notice of sale thereof. This action of the bank would amount to deficiency in the banking services. The complainant held entitled to recover difference between the highest trading price of the shares prevailing on the date of sale and the price for which shares were sold by respondent bank. Commission further held appellant entitled to claim a compensation of Rs. 30000/- for the mental agony, loss of business and cost of litigation.

- ***CHEATING COMMITTED BY BANK***

S.DUTTA, PROPRIOTER VS SBI & OTHERS¹²

In this case, 4 cheques received by complainant amounting to Rs. 1043393/- were misappropriated by staff of SBI with a view to give benefit to another person. In short, bank committed cheating. Commission held that there is deficiency in services by the bank and therefore liable to pay interest @ 12 % including interest on principal amount as well as compensation against mental harassment.

¹⁰ 2012 (1) CLT 23 (Punjab)

¹¹ 2012 (1) CLT 224 (NC)

¹² 2016 (4) CPJ 459 (NC)

**CASES WHERE BANK WAS HELD NOT
GUILTY OF DEFICIENCY IN SERVICES**

- ***USE OF ATM BY AN UNAUTHORIZED PERSON***

IN *AADITYA SHANKER SEN GUPTA VS SBI*¹³

In this case, commission held that the proper custody of the ATM card and the secrecy of the 4 digit pin number is the sole responsibility of the complainant. There are no RBI guidelines in India regarding CCTV recording in ATM booth, the non-production of the said CCTV footage from the side of respondent does not impair the defence of the bank in any way. Bank doesn't force its customer to use ATM CARD facility. If the customer to whom an ATM/ ATM CUM DEBIT CARD has been issued by the bank does not keep his ATM card in proper custody and also does not keep the connected pin confidential and allows somebody else by sharing with the ATM card and 4 digit secret pin to operate the account by using the said ATM card with secret pin, then bank cannot be fastened with any liability for withdrawal of any money from the account.

¹³ 2015 (3) CLT 174 (Tripura)

- ***RENEWAL OF INSURANCE POLICY***

**IN *POORNENDU BIR VS THE BRANCH
MANAGER, SBI & OTHERS*¹⁴**

In this case, a complainant took an insurance policy insurance premium debited from the loan account of the complainant. Policy subsequently not renewed and fire accident took place in the shop of the complainant. Whether bank is bound to renew the insurance policy? Commission held that no complainant produced a document showing that he ever instructed the bank to make payment of the renewal premium amount for the renewal of the insurance policy. Complainant himself received the insurance policy from the insurance company. So, the responsibility to make payment for the renewal of insurance policy lies with the complainant himself. Complainant himself is negligent and deficient In this regard and he cannot blame either the bank or the insurance company for the non-renewal of the insurance policy.

- ***RESPONSIBILITY OF THE THIRD PARTY INSURANCE***

IN *SBI VS MARYA RAJ*¹⁵

¹⁴ 2015 (4) CLT 597 (Tripura)

¹⁵ 2015 (4) CLT 566 (NC)

In this case, insured tractor, financed by bank, met with an accident. Premium of insurance not paid and the claim rejected. The respondent claimed that there was an arrangement of paying the regular premium to the insurance company by the petitioner on behalf of the respondent and same was to be debited from the loan account of the respondent. Commission held that third party insurance is the responsibility of the owner of the vehicle and by any stretch of imagination, petitioner bank cannot be held responsible.

- ***PENAL INTERST LEVIED BY BANK.***

IN STATE BANK OF BIKANER AND JAIPUR AND ANOTHERS VS DR. MOHAN LAL WADHWANI¹⁶

HERE COMPLAINANT TAKE A PERSONAL LOAN AND DID NOT paid timely instalments of the bank. Bank levied interest. On the complaint of complainant of the district forum held deficiency in service on the part of bank. On that order the state commission also dismissed the appeal filed by bank. Hence revision was filed and the main question was that the waiver schemes on Vishesh Rin Mukti Yojna is to pursue avenues for speedy settlement of chronic cases of NPA, AUC and dropped accounts through the committee approach. Accounts classified as NPA on or after 01 April, 2009

¹⁶ 2014 (4) CPJ 400 (NC)

not covered under the scheme. Complainant account was declared NPA only on 24 September, 2011. Any extension of scheme pursue would still not make him eligible under the scheme. Therefore the commission held that there is not deficiency of service in action of bank.

- ***BANK REFUSED TO PAYMENT***

IN RAMLINGAM VS SBI¹⁷

In this case complainant presented open demand draft which is negotiable across the counter for payment at the counter. The bank refused to make payment without establishing the identity of the complainant. Commission held that as per the RBI guideline, the bank are bound by KYC policy where identity of the customer is essential for any kind of banking transaction. Therefore there is no deficiency on the part of bank for demanding the appellant to produce his identity and address proof.

- ***CHEQUE LOST IN TRANSIT***

IN AJAY KUMAR SINGH VS CANARA BANK¹⁸

¹⁷ 2015 (3) CLT 221 (Punducherry)

¹⁸ 2015 (3) CLT 493 (NC)

Cheque of the complainant was sent by Bank for clearance by post. Cheque lost in transit. Commission held that it is not a case of deficiency in service because the cheques were not lost due to the negligence of the bank, but they were lost during postal transit. For the loss of cheques in postal transit the opposite party bank cannot be held deficient in service.

- **CHARGE PRECLOSURE PENALTY**

IN **IDBI BANK VS ASHWINI KUMAR SRIVASTVA**¹⁹

In this case commission held that bank was well within its rights in charging the pre-closure penalty for the complainant in terms of the loan agreement. There was RBI instructions against the charging on pre-closure penalty at that relevant time.

- **VEHICLE HYPOTHICATED WITH BANK**

CBI VS JABIR SINGH²⁰

In this case Supreme Court held that the person in possession of vehicle under the hypothecation agreement has been treated as the owner of the vehicle. The creditor bank is not liable to get renewed the insurance policy

on behalf of the owner of the vehicle from time to time.

- **DEPOSIT INSURANCE AMOUNT BY DEPOSIT SLIP**

IN **UNITED BANK OF INDIA VS KARTIKA BISWAL AND OTHERS**²¹

Here the complainant deposited the insurance amount by way of deposit slip. There was absolutely no indication in the deposit slip that the deposit was being made towards premium of insurance for the crop sown by the complainant in his field. Commission held that when neither the deposit slip had any indication of the deposit amount being the premium of insurance for the crop nor the complainant submitted the requisite crop certificate to the bank. It would be extremely difficult to hold that the bank was deficient in rendering services to the complainant because it appears to us that it was due to the complainant's own negligence that his crop remained uninsured.

- **WRONGLY CREDITED AN AMOUNT IN THE ACCOUNT OF UNAUTHORISED PERSON**

¹⁹ 2015 (2) CLT 278 (NC)

²⁰ 2015 (2) CLT 450 (SC)

²¹ 2016 (3) CLT9 (NC)

IN MANGAT PILLAI SHIV RAM GUPTA
VS BANK OF INDIA²²

In this case amount not credited to intending party because bank wrongly filled the account no of the party. Bank made efforts to recover amount after knowing wrong credit of amount. Commission held that there is no deficiency in service rendered by the bank.

• **ALLOWED** **PREMATURE
TERMINATION OF FDR**

IN NAVODAY VIDALAY SAMITI VS
CHIEF MANAGER ALLAHABAD BANK²³

In this case it was held that bank is not bound to allow premature termination of FDR, in terms of request made by the complainant. Had the term prohibiting premature withdrawal of FDR not been acceptable to complainant, it would have, immediately on receipt of FDR, returned it to the bank. That having not been done, irresistible inference is that deposit was made on terms and conditions mentioned in FDR. As regards deduction of income tax, it was statutory obligation of bank to deduct income tax from interest payable to complainant. Deficiency in service not proved.

CONCLUSION

Like various public sectors, bank is a big service provider to the common man. In India, there is no specific statute regarding the law of tort, except Consumer Protection Act, 1986. The Consumer Protection Act is a step by the Indian legislation to protect the consumer from organized service providing sector and it also provides cheaper and speedy relief to the consumer instead of established civil courts. In this paper various judicial pronouncements have been discussed which interpreted the deficiency of services on the part of the bank also interpreted position in which the bank could not be held guilty of services. Hence this paper is giving legal light to the consumer with the help he can relief against the deficiency on the part of bank.

²² 2015(4) CPJ 1 (AP)

²³ 2016 (1) CPJ 618 (NC)