# Chapter-1

# BANKER AND CUSTOMER

INTRODUCTION:-

Today banks have become part and parcel of our life. Banking in India mainly governed by the banking regulation Act 1949, and the reserve bank of India Act 1934.

The World Bank has been derived from the Latin word banc us or banque which means a bench the early bankers transacted their business at benches in a market place.

DEFINITION OF BANKING:-

The banking regulation Act 1949, 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 withdraw able by cheque , draft ,order or otherwise."

BANKER AND CUSTOMER:-

The moment an individual opens an account with the banker. He becomes a customer of the bank there exists a relationship between the banker and customer.

BANKER:- A banker is one who performs the business of banking

**DEFINITIONS**:-

Dr. Herbert. L. Hart says that a banker is one who in the ordinary course of his business, honors cheque drawn upon him by persons from when and for whom he receives money on current account".

This definition insits on certain condition for recognizing a person or institution as banker they are:-

- Acceptance of money on current account.
- Collection of cheques, drafts etc for customer.
- Payment of cheques drawn by customers which are essentially payable on demand.
- Banking business must be the main business.

CUSTOMER:- The term customer means "A person who has an account with the bank".
DEFINITION:- According to sir john paget "to constitute a customer there must be some recognizable course of habit of dealing in nature of regular banking business".

**GENERAL RELATIONSHIP BETWEEN A BANKER AND CUSTOMER:-**

The legal relationship Aries between two parties when they conclude contract through proposal and acceptance, base on the functions of banking, the general relationship between a banker and its customer can be put as follows:-

1. Relationship as debtor and creditor:- the relation of banker and customer is primarily that a debtor and customer the respective position being determined by the existing state of the customers".

When the banker opens an account in his book in the name of the customer by accepting deposits of money from the customer. He assumes the position of a debtors and the customer assumes the position of creditor. When the bank lends money to the customer, the customer is the borrower and the banker is lender.

2. **Trustee and beneficiary:-** when a banker accepts securities and valuables for safe custody he becomes a trustee. The person for whose benefit valuables are held is called beneficiary.

3. **Bailee and Bail or:-** when a customer keeps jewellery or any valuable article in a bank he is called bailor, and the bank which takes the possession of the jewellery is called bailee.

4. **Agent and principal:-** on behalf of the customer (principal) the banker(agent) pays telephone bill, electricity bill, purchases vegetables, shares, debentures, train tickets, etc. there are called agency functions of the banker.

**SPECIAL RELATIONSHIP OF BANKER AND CUSTOMER:-**

Special relationship between a banker and a customer refers to the special obligation and rights of the banker against the customer and vise-versa.the special features are as follows.

**1. Obligation to honor a customer's cheque:-** A banker has the statutory obligation to honor cheques issued by his customers. Either on his current account or savings account or any other account maintained for this purpose.

a) **There must be sufficient funds of the drawer(customer):-** there must be sufficient funds available in the account of the customer to honor the cheque, the funds in the account must be at least equal to the amount of the cheque presented for payment, because a banker is not to makes part payment of the cheque.
b) **Applicability of funds:-** this means that the funds must be available for the cheque drawn, if the customer has drawn a cheque against one account
c) having insufficient funds, the banker cannot debit it to his other account where he has sufficient funds unless the customer ask for it in writing.
d) **Presentation of cheque within a reasonable time:-** This means that unless a cheque is presentation within a reasonable time after the apparent date of its issue. It should not be honored by the banker, further the cheque should not be post-dated.

**d) Banker must be duly required to pay :- This** means that the cheque is complete, in all respect and is presented during banking hours. The banker is bound to honor the cheque issued by its customers.

**NO garnishee or attachment order:-** A banker is fully justified in refusing payment in such a care when a prohibitory order is received from a court or from any other competent authorities as such, tax authorities for attachment of the customer's account with the bank.

**Garnishee order:-** This is an order of the court issued in case of debtors failure to pay his debts.

**Consequences of wrongful dishonor of cheque:-**

By mistake or negligence if a banker or his employees dishonor a cheque it is called wrongful dishonor. So long as customers account has sufficient funds a banker should honor cheques presented by customer. If a banker commits a mistake in his account book which reduces the balance of the amount it leads to dishonoring a cheque.

1.**smaller the amount of cheque dishonored greater the loss or damage to reputation:-** the amount of damages will not necessary be large only because the amount of cheque dishonored is large as a customer is supposed to suffer in credit if his cheque for a small amount is dishonored than in the case of one for a large amount.

2**. Trader-customer substantial damages:-** In case of traders and businessment, it is presumed that they suffer loss of reputation greatly in the event of their cheque being dishonored therefore they are entitled to claim not only the general damages but substantial damages for such loss of credit.

3. **Non-traders-only nominal damages:-** In Gibbe v/s west minister bank Mrs. Margaret Gibbons a non- trader, paid a cheque for pound 6/16/18 drawn on the west minister bank to her landlord in payment of a slip on the part of the bank regarding the credit of a sum of money paid previously by her. The court awarded only 40shillings as nominal damages as she being a non-trader was not entitled to recover substantial damages unless the damages were alleged and proved as special damages.

4. **Special damages:-** If the non-traders allege and prove that they have sustained special damages they are entitled to it. This has been proved in the care of **Rajagopalan v/s canara bank.**

**Mr. Rajagopalan** was a representative of a group of concerns issued a cheque on his personal account to pay the bill of telephone. The cheque was disconnected and rajagopalan was removed from service.

The court upheld the damages and awarded Rs1400/- for the loss of prestige status and mental agony resulting from the dishonor of the cheque.

5. **History of customers account:-** The amount of damages will depend upon the history of the customer account if the customer already has to his discredit one or two instances of his cheques being dishonor due to insufficient funds, the court may award only nominal damages.

**1. Obligation to maintain secrecy:-** One of the implied terms of contract between banker and customer is that a banker is obligation to keep the affair of his customer secret under special circumstances. Maintenance of secrecy is not only regarding debit or credit balance of the amount but also to all the transaction that go through the account and to the securities.

A banker would be justified in disclosure information of a customer's account for the following reasons.

a) **Disclosure under compulsion of law**:-the banker is compelled to disclosure the information under due process of law and by authorized officers under the various enactment, the reasonable and proper occasion under income tax Act 1961, under the companies Act 1956, under the RBI Act 1934, under FEMA Act 1999.

b) **Duty to the public to disclose:**- A banker may justifiable disclose any information relating to his customers account when it is a duty to the public to disclose such information.

c) **Disclosure in the interest of a banker:**- the disclosure is justified in disclosing information to a guarantor of the account, when banker in his own interest to recover his dues gives the information such diligence of information to the guarantor is justified.

d) **Disclosure with the consent of customer:-T**he consent of the customer may be expressed or implied a customer may authorize his agent to collect information. similarly, the customer may by giving the name of the banker as a reference, impliedly authorizes him to disclose his state of a

**3. Banker's right of lien:-** this is a special right enjoyed by a banker 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.

It confers the creditors the right only to retain goods but not the right to sell it.

Lien can be of two kinds:-

Particular lien:- A particular lien gives the right to retain possession only of goods in respect of which the charges or dues have arisen.

For example:- A tailor, or a transporter, or a mechanic has the right to retain clothes or goods or machines sent for repairs until his charges are paid

**General lien:-** A general lien is applicable in respect of all amount due from debtors to the creditors bankers, in the absences of a contract to the contrary retain as security for a general balance of account any goods bailed to them there is no need for a special contract.

**4. Bankers right of appropriation:-** when a customers ower several distinct debts to a banker and makes a payment which is insufficient to discharge all his indebtedness there is a problem of appropriating this payments.

**B**etween banker and customer the question of which debt is to be adjusted for a payment made by a customer arises frequently the general law is that when money is paid, it is to be applied according to the expressed well of the payer not the receiver. In the event of the debtor failing to do so. The creditor has a right to make the appropriation according to his choice.

5. **Banker's right of set off :-** Right of set off is a right of a banker that entitles him to adjust a debt balance in the account of a customer against any credit balance in his other accounts.

6. **Banker's right to charge interest and commission:-**

A banker is entitled to interest on advances and a reasonable commission for other services rendered by him this is an implied right available to a banker in case of commission for service like collection of cheques bills etc. the standard rates are fixed and are made known to customers.

## COMMERCIAL BANKING

**Commercial bank** is a profit seeking business firm, dealing in money and credit. It is a financial institution dealing which accepts deposit of money from the public to keep them in its custody for safety.

**DEFINITION:-** According to **Crowther,** " A commercial bank is an institution which collects money from those who have it to spare or who are saving it out of their income and leads this money out to those who require it.

**ROLE OF COMMERCIAL BANK IN THE ECONOMIC DEVELOPMENT OF INDIA**:-

**Bank promotes capital formation:-** commercial bank accept deposits from individual and business these deposits are then made available to the business which make use of these for productive purpose in the country. 2. **Investment in new enterprises: - businessmen** normally hesitate to invest their money in risky enterprises.

3. **Promotion of trade and industry:-** with the growth of commercial banking, there is vast expansion in trade and industry.

4. **Development of agriculture:-** the commercial bank particularly in developing countries are now providing credit for development for agriculture and small scale industries in rural areas.

5. **Balanced development of different regions:-** the commercial banks plays an important role in achieving balanced development in different regions of the country .they help in transferring surplus capital from developed regions to the less developed regions.

6. **Influencing economic activity:-** The banks can also influence the economic activity of country through its influence: a) availability of credit. B) The rate of interest it the commercial banks are able to increase the amount of money in circulation through credit creation or by lowering the rate of interest, it directly affects economic development.

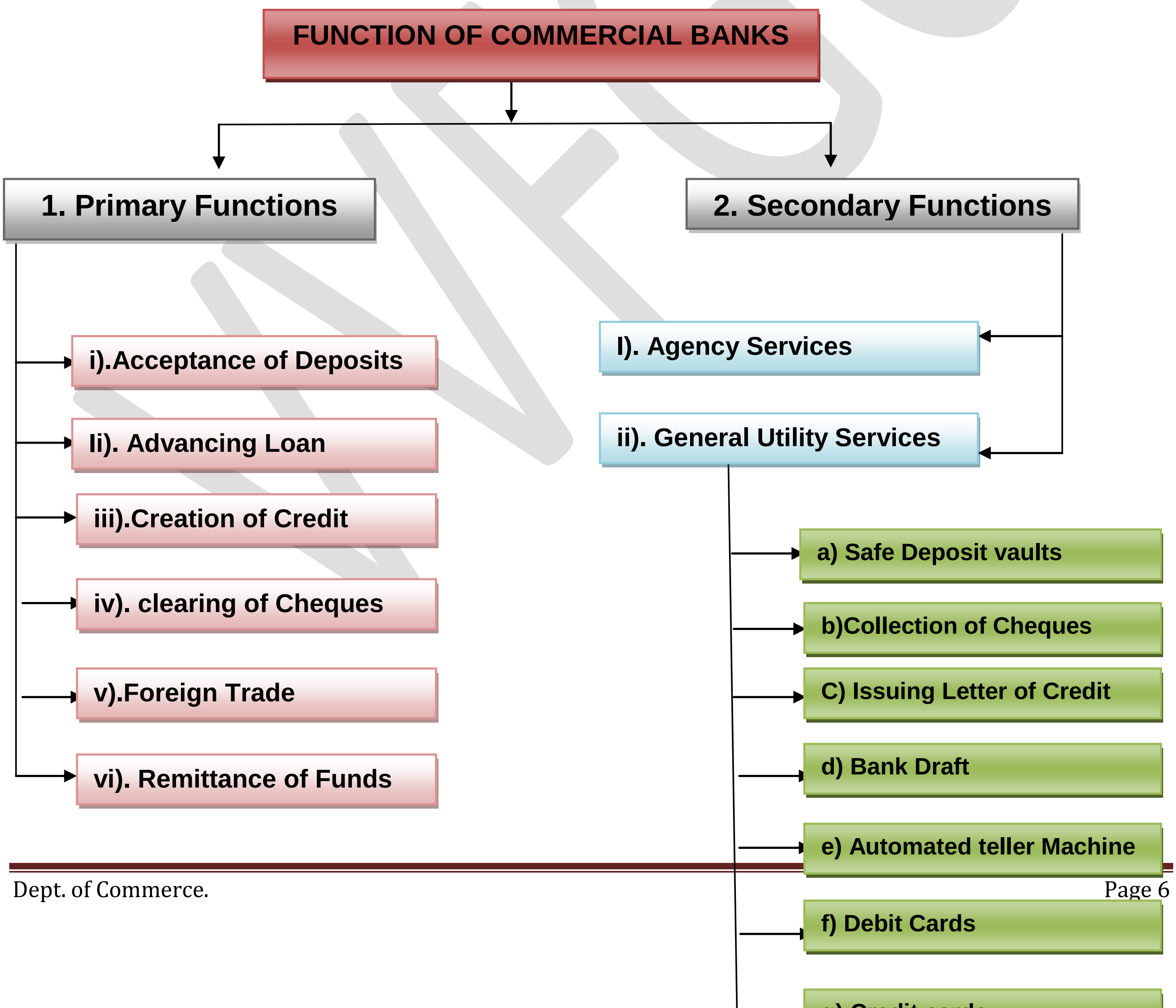
7. **Implementation of monetary policy:-** The central bank of the country controls regulates volume of credit through the active cooperation of the banking system in the country.

8. **Monetization of the economy:-** the commercial banks by opening branches in the rural and backward areas are reducing the exchange of goods through barter.

9. **Export promotion cells: -** In order to increase the exports of the country the commercial banks have established export promotion cells.

**FUNCTIONS OF COMMERCIAL BANKS**

There are many functions performed by commercial banks. There are divided under the following heads….


FUNCTION OF COMMERCIAL BANKS
1. Primary Functions
i).Acceptance of Deposits
Ii). Advancing Loan
iii).Creation of Credit
iv). clearing of Cheques
v).Foreign Trade
vi). Remittance of Funds
2. Secondary Functions
I). Agency Services
ii). General Utility Services
a) Safe Deposit vaults
b)Collection of Cheques
C) Issuing Letter of Credit
d) Bank Draft
e) Automated teller Machine
f) Debit Cards

PRIMARY FUNCTIONS: - The primary function of the commercial bank includes:

I. **Acceptance of deposits: -** commercial banks accept various types of deposits from public especially from its clients. These deposits are payable after a certain period. Bank generally accepts four types of deposits, a) current deposits (b) saving deposits (c) fixed deposits (d) recurring deposits.

1. **Current deposits: -** These deposits are also known as demand deposits. These deposits can be withdrawn at any time. Generally, no interest is allowed on current deposits.
2. **Saving deposits:** - If the customer wishes to withdrawn more than the specific amount at any one time, he has to give prior notice. Interest is allowed on the credit balance of his account.
3. **Fixed deposits:** - These deposits are also known as time deposits, these deposits cannot be withdrawn before the expiry of the period for which they are deposited or without giving a prior notice for withdrawal.
4. **Recurring deposits:** - recurring deposits are a special deposits offered by bank in India which help people with regular income to deposit a fixed amount every month into their recurring deposit account and earn interest at rate applicable to fixed deposit.

II. **Advancing loan: -** A financial transaction happen between the commercial bank and the customer where the customer financial deficit is covered by the bank through advances may take different forms such as loans, overdraft, cash, credit, purchasing, bill of exchange, discounting of bill and so on.

1. **Overdraft facilities:-** in case, the depositor in a current account is allowed to draw over and above his account up to a previously agreed limit. Suppose a businessman has only Rs.6, 000/- in his current account in a bank but requires Rs12, 000/- to meet his expenses. He may approach his bank and borrow the additional amount of Rs.6, 000/-. The bank allows the customer to overdraw his account through cheques.

2. **Cash credit:** - Cash credits are normally granted against the security of good e.g. raw materials, stock in processor, finished goods.
3. **Discounting bills of exchange:** - Bills clean or documentary are sometimes purchased from approved customers in whose favour regular limits are sanctioned.
4. **Money at call:**- Bank also grant loans for a very short period, generally not exceeding 7days to the borrowers, usually dealers or brokers in stock exchange markets against collateral securities like stock or equity shares, debentures etc.,
5. **Consumer credit:**- Bank also grant credit to household in a limit amount to buy some durable consumer goods such as television sets, refrigerators, etc. or to meet some personal need like payment of hospital bill etc…
6. **Miscellaneous advances:** - Among other forms of bank advances there are packing credits given to exporters for a short duration, export bills purchased/discounted.

III. **Creation of credit: - Creation of credit is the one of the important function of commercial bank.** Credit creation is the multiple expansions of bank demand deposits. It is an open secret that bank advance a major portion of their deposits to the borrowers and keep smaller parts of deposits to the customers on demand.

IV. **Clearing of cheques:** - The c0mmercial bank renders an important service by providing to their customer economical medium of exchange like cheques. It is found much more convenient to settle debts through cheques rather than through the use of cash.

V. **Foreign trade:** - the bank finance internal and foreign trade through discounting of exchange bills. Sometimes, the bank gives short term loans to trade on the security of commercial papers.

VI. **Remittance of fund:**- commercial bank on account of their network of branches throughout the country also provide facility to remit funds from one place to another for their customers by issuing bank draft, mail transfer or telegraphic transfers on nominal commission charges.

**SECONDARY FUNCTION**

**I. Agency services: -** commercial bank act as attorney for their client. They buy and sell shares and bonds receive and pay utility bills, premium, dividends, rents and interest for their clients. Banks also perform certain agency functions for and behalf of their customer.

**1. Collection and payment of credit instrument: -** Bank collect and pay various credit Instruments like cheques, bill of exchange, promissory note etc… on behalf of their customer.

**2. Purchase and sale of securities:** - banks purchase and sell various securities like shares, stock, bonds, debentures, on behalf of their customers.

**3. Collection of dividends on shares: - bank collect** dividends and interest on shares and debentures of their customers and credit them to their account.

**4. Act as correspondent: -** sometimes bank act as representative and correspondents of their customers. They get passport, traveler's ticket and even secure air and sea passage for their customers.

**5. Income tax consultancy: - Bank** may also employ income tax experts to prepare income tax return for their customers and to help them to get refund of income tax.

**6. Execution of standing order: -** banks execute the standing instruction of their customers for making various periodic payments.

**Act as trustee and executor:-** banks preserve the "wills" of their customers and execute them after their death.

II. **Generally utility service:-** In additional to agency service, the modern banks provide many general utility services for the community as given below:

1) **Safe deposit vaults: -** A bank undertakes the safe custody of the customer valuable and document by providing a safe deposit vault. These are kept in specially constructed strong room.
2) **Collection of cheque bill and promissory notes: - The** customers deposit cheque bill of exchange and promissory note into their account with the bank these instruments are collected by the bank on behalf of their customers and credited to their account.
3) **Issuing letter of credit:** - A letter of credit is a commercial instrument of assured payment it is widely used by businessmen for various purpose the bank undertakes to make payment to a seller on production of document stipulated in the letter of credit.
4) **Bank Draft:**- A bank draft is an order from one branch to another branch of the same bank to pay a specified sum of money to a personal named there in or to his order. A draft always payable on demand.
5) **Automated teller machine (ATM):**- ATM is a channel of banking service to its customer. It's tradition and primary use is to dispense cash upon insertion of a plastic card and its unique PIN i.e. (personal identification number) the ATM card to their customer having current or saving account holding a certain minimum balance in their account.
6) **Debit card: - A** debit card is a plastic card that provides an alternative payment to cash when making purchase.
7) **Credit card: -** A credit card is an instrument of payment it is a source of revolving credit. The card are plastic cards issued by the banks to their customer, card number and expiry date are printed on the plastic card.
8) **Tele banking: - T**elephone banking is a service provided by commercial banks which allows its customers to perform transactions over the telephone. Most telephone banking service use an automated phone answering system with phone keypad response or voice recognition capability.
9) **Internet banking:-** internet is a channel of service to banking customers. The access to account information well as transaction is offered through the world-wide-web network of computer on the internet.

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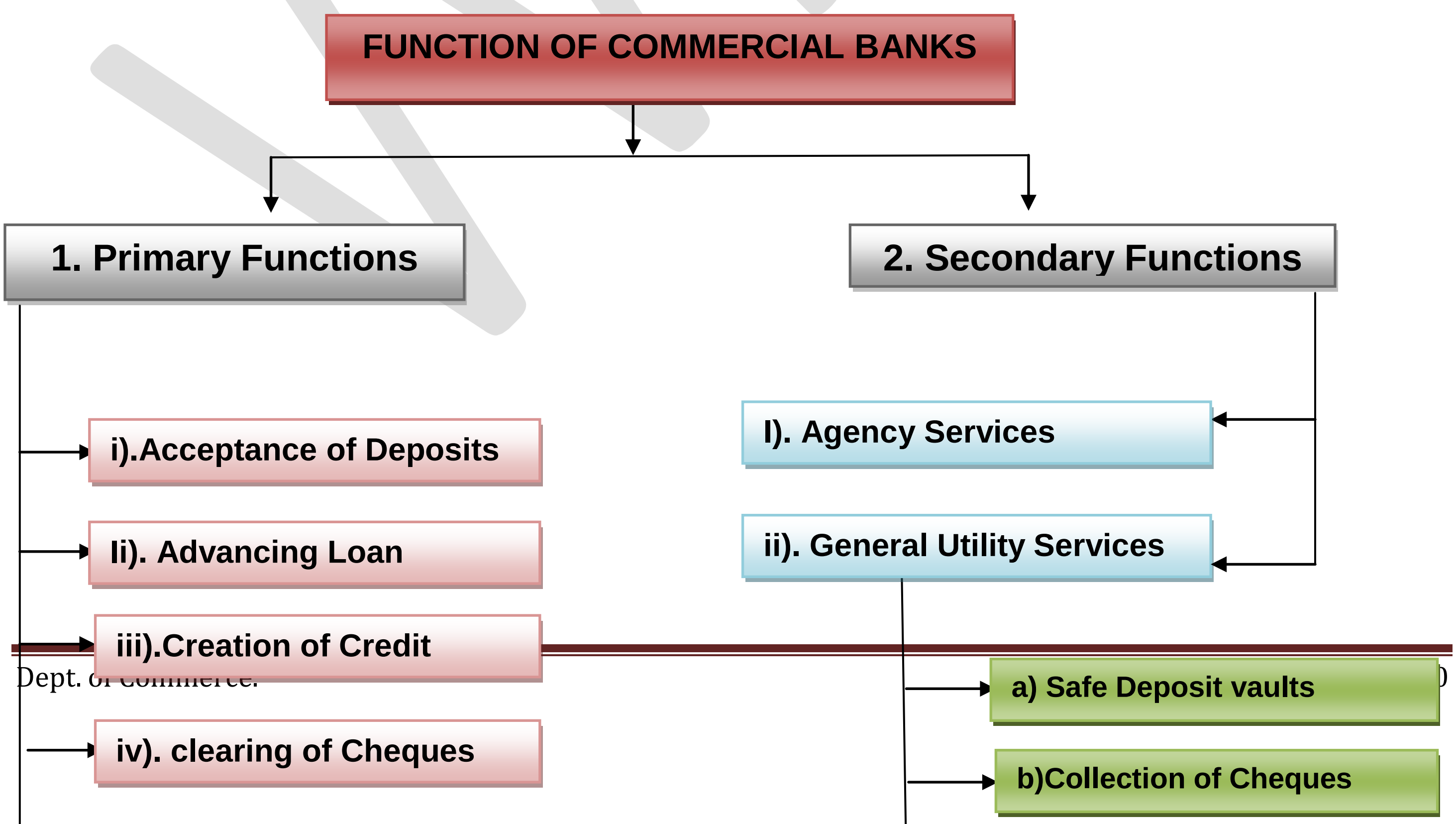

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## CHAPTER:-2

## NEGOTIABLE INSTRUMENT

Meaning of NI:- negotiable instrument is a piece of paper which entitles to a sum of money mentioned on it, and which is freely transferable from one person to another.

Definition:-According to "negotiable instrument Act 1881" negotiable instrument means a promisary note, bill of exchange or cheque payable either to order or bearer.

"whether the word order or bearer appear or the instrument or not."

**Features/ characteristics of negotiable instrument:-**

The important features or characteristic of negotiable instrument are:-

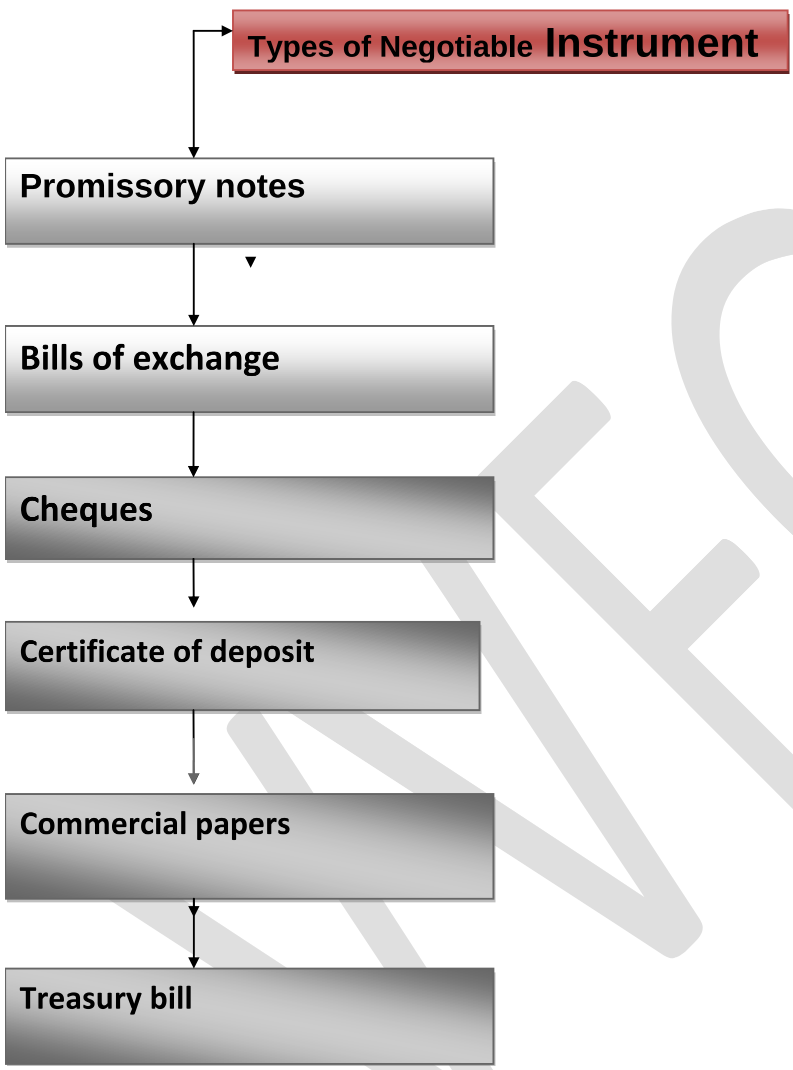
1. Property:- NI is the property like other valuable assets. The person for whom the instrument is drawn is the holder and owner of that property.
2. Defects in title:- The holder in good faith and for value called the "holder in due course" get the instrument free from all defects of any previous holder.
3. Payable to certain person:- certain person is a person whose name is mentioned in NI. The NI instructs to pay only to certain person.
4. Right:- the holder is due course is not affect by certain defences which might be available against previous holder, for example, fraud, to which he is not a party.
5. Payable to order:- All the NI are payable to order which is expressed to a particular person.
6. Payable to Bearer:- The NI is expressed to be payable to bearer when it is blank endorsement. It is specifies that the person in possession of the bill is a bearer of the instrument which is so expressed payable to bearer.
7. Payment:- A NI may be made payable to two or more payees, or it may be payable in alternative to one or two payees.
8. Consideration:- consideration is the concept of legal value in connection with contracts. Consideration in the case of a NI is assumed.

**PRESUMPTION To NEGOTIABLE INSTRUMENT:-**

1. Consideration:- Every NI is made or drawn for a consideration. Thus, this need not necessarily be mentioned.
2. Date:- The NI is drawn on the date shown on the face of it.
3. Acceptance before maturity:- The NI is accepted before its maturity, i.e., before it because overdue.
4. Transfer before maturity:- The NI is transfer before its maturity.
5. Order of Endorsements:- The Endorsement appearing upon a negotiable instrument were made in the order in which they appear.
6. Holder in due course:- The holder of a NI is the holder in due course except where the instrument has been obtained from is lawful owner or its lawful custodian by means of offence or fraud.

TYPES OF NEGOTIABLE INSTRUMENT:-

A negotiable instrument can be of the following types:




Meaning of promisary note:- The term promisary note means it is a promise in the writing by a person to pay a certain sum of money to a specific person.

Definition:-According to sec 4 of the negotiable instrument Act 1881"A promisary note is an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money to a certain person or to the bearer of the instrument."

- Maker

- Payee

**ESSENTIAL OF PROMISSARY NOTE:-**

1. It must be in writing
2. It contain promise to pay
3. Promise to pay must be unconditional.
4. Contain only in terms of money only.
5. Definite amount of money.
6. It must contain certain parties.
7. It must be signed by maker.
8. It must be properly stamped, other formalities.

Meaning of bill of exchange:-the term bill of exchange may be defined as an order in writing requiring a certain person to pay a certain sum of money to a specified person.

Definition: - According to sec 5 negotiable instrument Act 1881 "A bill of exchange is an unconditional order signed by the maker directing a contain person to pay certain sum of money only or to the order of a certain person are to the bearer of the instrument".

PARTIES

- Drawer:-one who draws the money.
- Drawee:-one who gives the money.
- Payee:- one who pays the money.

**ESSENTIALS OF BILL OF EXCHANGE:-**

1. It must be in writing.
2. It is an express order to pay.
3. Unconditional order.
4. Order to pay in terms of money only.
5. Order to pay in definite and clear.
6. It contains certain parties.
7. It must be signed by drawer.
8. It is properly stamped.
9. Other formalities.

Meaning of cheque:- The term cheque may be defined as a bill of exchange which is drawn upon a banker and his payable on demand.

Definition:- According to 1881 sec 6 of the negotiable instrument Act "A cheque is a bill of exchange drawn by a specified banker and not expressed to be payable otherwise then on demand and it includes the cheque in the electronic form."

**ESSENTIAL OF CHEQUES:-**

1. All the essential of bill of exchange.
2. A cheque is drawn upon by specified.
3. Cheque is always payable on demand.
4. Cheque in electronic form.

**Difference b/w bill of exchange and cheque**

| BILL OF EXCHANGE | CHEQUE |
|---|---|
| Drawn upon after certain period | payable on demand |
| It requires acceptance | It doesn't require any acceptance |
| It requires acceptance | It doesn't require any kind of stamp |
| No provision regarding crossing | Provision for crossing |
| In case of dishonour of a bill the notice of dishonour must be given to be drawer | In case of dishonour of cheque no notice is required |
| The payment of bill of exchange cannot be taken the provision of stop payment | In case of payment of cheque it can be taken a provision of stop payment |
| Bill of exchange has to be made on a piece of paper | Cheque may take electronic form |

**FEATURES OR CHARACTERISTICS OF CHEQUE:-**

1. **Cheque is an instrument in writing:-** A cheque must be in writing. It can be written in ink pen, ball pen, typed or even printed.
2. **Contain an unconditional order:**- Every cheque contain an unconditional order issued by the customer to his bank it does not contain a request for payment.
3. **Cheque is drawn on a specified banker:**- A cheque is always drawn on a specified banker. Cheque book facility is made available only to account holder who supposed to maintain certain minimum balance in the account.
4. **Cheque must be signed by customer:** - A cheque must be signed by customer. Unsigned cheque or signed by person other than customers are not regarded as cheque.
5. **Payable on demand: -** A cheque when presented for payment must be paid on demand. If cheque is made payable after the expiry of certain period of times then it will not be a cheque.

6. **Certain sum of money:-** The amount to be paid by the banker must be certain. It must be written in words and figures.
7. **Payable to a certain person or to the bearer:- the** payee of the cheque should be certain whom the payment of a cheque is to be made i.e. either real person or artificial person like Joint Stock Company.
8. **Cheque must be duly dated by customer of bank:- A** must be duly dated by the customer of bank. The cheque must indicate clearly the date, month, and the year. A cheque is valid for a period of 3months from the date of issue.

**TYPES OF CHEQUE:-** they are 2 types :-

- **Open cheque**
- **Cross cheque**

**TYPES OF CROSSING OF CHEQUE:-**

- General crossing
- Special crossing
- Not negotiable crossing
- Restrictive crossing

**General crossing:-sec 123** of the Act refers to general crossing as," where a cheque bears across its face two traverse lines with or without the words "and co." or any abbreviation thereof or the words' not negotiable, the cheque is said to have been crossed generally.

**Special crossing:- section 126 Act provide that** " where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or his agent for collection."

**Not negotiable crossing:- section 130 of the NI Act provide that** A person taking a cheque crossed generally or specially bearing in either case the words ' not negotiable' shall not be able to give a better title to the cheque than the title of person from whom he took had".

**Restrictive crossing:- A cheque is set** to be a or payee account are added the crossing. It may be done in the general or special crossing.

**Double crossing:-** Double crossing is a form of special crossing of cheque under which two collecting banker's name is mentioned between two parallel lines.

**Specimen of double crossing :-** union bank of India

**To**

State bank of India

"As agent for collection"

**<u>ENDORSEMENT: -</u>** The term endorsement may be defined as signing one's name on the NI for purpose of transferring it to another person.

**<u>ESSENTIALS:-</u>**

1. **I**ntegral part of the instruments.
2. It should be made in ink.
3. It must be made by the holders of the instrument.
4. The intention is to negotiate the instrument.
5. Endorsement must be of entire instrument.

**<u>TYPES OF ENDORSEMENT:-</u>**

- Blank or general endorsement
- Full or special endorsement
- Restricitive endorsement
- Partial endorsement
- Facultative endorsement
- Contingent endorsement

**BLANK ENDORSEMENT: -** the endorsement in which the endorser merely sign his name on the back of the instrument without mentioning the name of the person to whom the instrument is endorsed.

**FULL ENDORSEMENT:- it** is an endorsement in which the endorser writes not only his name, but also the name of the person to whom the instrument is endorsed on the back of the instrument.

**RESTRICTIVE ENDORSEMENT:- It** is an endorsement in which the endorser restricts the further transferability in express words to some specified person only. It prohibits or restricts further negotiation of the instrument or which express that it is only authority to deal with the instrument as directed.

**CONDITIONAL ENDORSEMENT:- It** is an endorsement which contain a condition made by the endorser. The endorsee can receive the amount only on the fulfillment of the condition or event.

**SANS RECOURSE ENDORSEMENT:- Under** this endorsement, the endorser frees himself from any such liability arising from the dishonor of the instrument.

**SANS FRAIS ENDORSEMENT:- In this** type of endorsement, the endorser makes it clear that no one should incur any expense on his account in respect of the Negotiable Instrument.

**FACULTATIVE ENDORSEMENT:- In** case of facultative endorsement, the endorser waives or surrenders his right to receive the notice of dishonor by writing the words “Notice of dishonor waived” after writing the name of the endorsee.

# CHAPTER -4

# COLLECTING BANKER

**MEANING:-**A collecting banker is one who undertakes to collect the amount of cheques and bills for his customer from the paying banker. In other words, every crossed cheque is necessarily to be collected through any bank, which is known as collecting banker.

**DUTIES:-**

1. **Due diligence in the collection of cheques: -** The collecting banker is bound to show due care and diligence in the collection of cheque presented to him. In case a cheque is entrusted with the banker for collection, he is expected to show it to the drawee banker within a reasonable time.
2. **Serving notice of dishonour: -** When the cheque is dishonoured, the collecting banker is bound to give notice of the same to his customer within a reasonable time. It may be noted here, when a cheque is returned for confirmation of endorsement, notice must be sent to his customer.
3. **Agent for collection: -** In case a cheque is drawn on a place where the banker is not a member of the clearing house he may employ another banker who is a member of the clearing house for the purpose of collecting the cheque. In such a case the banker becomes a substituted agent.
4. **Remittance of proceeds to the customer:** - In case a collecting banker has realized the cheque, he should pay the proceeds to the customer as per his direction. Generally, the amount is credited to the account of the customer on the customer's request in writing; the proceeds may be remitted to him by a demand draft.
5. **Collection of bills of exchanges:** - There is no legal obligation for a banker to collect the bills of exchange for its customer. But, generally, bank gives such facility to its customers. In collection of bills, a banker should examine the title of the depositor. In case a new customer comes, the banker should extend this facility to him with a trusted reference.

## RIGHT OF COLLECTING BANKER

1. **Right of collecting bank to charge-back or refund: -** If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonour, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back its customer, whether or not it is able to return the item.

2. **Right of item by collecting banker: -** A collecting banker returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.
3. **Right of depositary-prayer bank to charge-back or refund: -** A depositary bank that is also the payer may charge back the amount of an item to the account of its customer or obtain refund in accordance with the section governing return of an item received by a prayer bank for credit on its books.
4. **Right of charge-back unaffected in certain cases: -** The right to charge-back is not affected by:
   1. Previous use of a credit given for the item; or
   2. Failure by any bank to exercise ordinary care with respect to item, but a bank so failing remains liable.
5. **Effect of failure to charge-back or claim refund: -** A failure to charge-back or claim refund does not affect other right of the bank against the customer or any other party.

**RESPONSIBLITIES OF COLLECTING BANKER**

1) **Due care and diligence in the collection of cheques: -** The collecting banker is bound to show due care and diligence in the collection of cheques presented. In case a cheque is entrusted with the banker for collection, then the banker is expected to show it to the drawee within a reasonable time.
2) **Serving notice of dishonour:** - When the cheque is dishonour, the collecting banker is bound to give notice of the same to the customer within a reasonable time.
3) **Agent for collection:** - In case a cheques is drawn on a place where the banker is not a member of the 'clearing-house' then the banker may employ another banker who is a member of the clearing-house for the purpose of collecting the cheque where the banker becomes a substituted agent.
4) **Remittance of proceeds to the customer:** - The amount is credited to the account of the customer on the customer's request in writing; the proceeds may be remitted by a demand draft, in such circumstances.
5) **Collection of bills of exchange: -** There is no legal obligation for a banker to collect the bills of exchange for its customer. Generally, bank gives such facility to its customers. In collection of bills, a banker should examine the title of the depositor as the statutory protection.

**STATUTORY PROTECTION FOR COLLECTING BANKER**

1) **Good faith and without negligence: -** statutory protection is available to a collecting banker when he receives payment in good faith and without negligence. The phrase in "good faith" means honestly and without notice or interest of deceit or fraud and does necessarily require carefulness. Negligence on the part of the banker.
2) **Collection for a customer:** - statutory protection is available to a collecting banker if he collects on behalf of his customer only. If he collects for a stranger or noncustomer, he does not get such protection. As Jones aptly puts it "duly crossed cheques are only protected in their collection, if handled for customer".

3) **Acts as an agent:** - A collecting banker must act as an agent of the customer in order to get protection. He must receive the payment as an agent of the customer and not as a holder under independent title.
4) **Crossed cheques:** - statutory protection is available only in case of crossed cheques. It is not available in case of uncrossed or open cheques because there is no need to collect them through a banker.

**HOLDER FOR VALUE**

A collecting banker is holder for value if he gives the value of the cheque in any form to its customer before collecting the proceeds of the cheque deposited by the latter. He does not remain an agent of the customer, but becomes the owner of the cheque in his own right since he has paid value for it and has acquired the ownership right in good faith. In such a situation, the banker is called holder for value and he is also the holder in due course.

**When collecting banker become a holder for value?**

ACCORDING TO SIR JOHN PAGET, a banker becomes a holder for value in the following ways:

1) By lending further on the strength of the cheque;
2) By paying the amount of the cheque or part of it in cash or in account before it is cleared;
3) By agreeing that the customer may draw before the cheque is cleared;
4) By accepting the cheques in avowed reduction of an existing overdraft;
5) By giving cash over the counter for the cheque at the time it is deposited in for collection.

**HOLDER IN DUE COURSE**

Holder in due course is one holding a cheque or promissory note, received for value, in good faith and with no suspicion that it might be no good, claimed by another, overdue, or previously dishonoured. Such a holder is entitled to payment by the maker of the cheque or note. Status as a “holder in due course” is an affirmative defence against all legal claims the debtors may have against the original creditor. In other words, a “holder in due course” does not become responsible for the original creditor’s alleged misdeeds in the original credit transaction.

## CHAPTER-6

## EMERGING TRENDS AND ADVANCEMENT IN BANKING

Information technology is one of the most important facilitators for the transformation of the Indian banking industry in terms of its transactions processing as well as for various other internal systems and process.

**RETAIL BANKING: -**

**Retail banking directly deals with individuals and provides personal financial services including current and savings accounts, mortgages, insurances, credit cards, loans, pensions and investments.**

**CHARACTERISTICS FEATURES are:**

1. **COMPETENCIES: -** In consumer banking, because the products and services that are delivered and so diverse, it can absorb individuals of many different backgrounds, personality dispositions and skills.
2. **CUSTOMER NEEDS: -** The needs of customers that are encountered in consumer banking are very diverse ranging from a one-off cash remittance to long term mortgages.
3. **SPECIALIZATION:** - To be able to specialize in a work area in consumer in a work area in consumer banking will also be useful in helping one to move up the corporate ladder. *For example,* financial planning is a highly valued skill consumer banking because of a recent rapid increase in demand.
4. **INTERNAL COMMUNICATION: -** Internally the multifaceted role of consumer banking requires individuals to work with people from many other departments and specialty areas.
5. **ACQUIRING NEW SKILL:** - The current changing economic and bank environment are likely to introduce new services and work skill in consumer banking.

**COMPANY SOCIAL RESPONSIBILITY OF BANKING: -**

1. **ECONOMIC RESPONSIBILTY: - This** is the traditional reason for having banks, in other words to increase the owner's welfare, ensure profitability and growth. One of the means of this is financial innovation.

2. **LEGAL RESPONSIBILITY: -** Regulation is determined by statutes and its aim is to minimise risk and ensure safety and confidence in the financial system.
3. **ETHICAL RESPONSIBILITY: - E**thical norms can be interpreted through individual conscience and the expectations of external stakeholders.
4. **DISCRETIONARY RESPONSIBILITY: -** It cannot be interpreted through external expectation activity.

## CSR ACTIVITY INTEGRATED INTO BUSINESS: –

1) Developing financial literacy and awareness, financial education.
2) Responsible, prudent lending, risk management.
3) Fair and transparent financial services, handling of complaints.
4) Helping disadvantage clients to use banking services, products for clients with special needs.
5) Involvement and ethical treatment of stakeholders.
6) Providing financial support to social enterprises.
7) Financing environmental protection investments.
8) Developing the basic principles of financing sensitive sectors.
9) Combating money laundering, corruption and terrorism.

## NON- BUSINESS ACTIVITIES: -

1. Volunteering to improve the living environment.
2. Supporting disadvantaged social groups.
3. Supporting local communities.
4. Supporting sports.
5. Supporting **NGO**.
6. Supporting culture and the arts.

### MICRO FINANCE: -

Microfinance is defined as any activities that include the provision of financial services such as credit, savings, and insurance to low income individual which fall just above the nationally defined poverty line and poor individuals which fall below that poverty line, with the goal of creating social value.

## DEFINATIONS OF MICRO FINANCE: -

"According to **Rutherford 1999"** microfinance is the mean by which poor people convert small sums of money into large lump sums.

## FEATURES OF MICROFINANCE: -

1. It is a tool for empowerment of the poorest. That is it is an essential part of rural finance.

2. Delivery is normally through self help groups **(SHGs).**
3. It deals in small loans.
4. It basically caters to the poor households.
5. It is one of the most effective and warranted poverty alleviation strategies.
6. It provides an incentive to grab the self employment opportunities.
7. It is more service-oriented and less profit oriented.
8. It is meant to assist small entrepreneur and producers.
9. Poor borrowers are rarely defaulters in repayment of loans as they are simple and god-fearing.
10. It is essentially for promoting self-employment, generally used for:
    - A. Direct income generation.
    - B. Rearrangement of assets and liabilities for the household to participate in future opportunities and
    - C. Consumption smoothing.

## SELF HELP GROUPS AND BANK LINKAGE: -

NABARD, through its micro credit innovations department has continued its role as the facilitator and mentor of microfinance initiatives in the country.

### 1) SELF HELP GROUP BANK LINKAGE PROGRAMME(SHG BLP)

The NGO sector has played a prominent role of working as a self help group promoting institution (SHPI) by organizing, nurturing and enabling credit linkage of SHGs with banks. NABARD later coopted many others as SHPIs include many others as SHPIs including the rural financial institutions **(RRBs, DCCBs, and PACS),** Farmers clubs **(FCs),** SHG federation; individual rural volunteers **(IRVs)** etc.

### 2) FINANCING OF JOINTLIABLITY GROUPS(JLGs)

Financing of JLGs was introduced as a pilot project in 2004 05 by NABARD in 8 states with the support of 13 RRBs the scheme was later mainstreamed for the banking system in the year 2006. JLGs are informal groups of 410 members who are engaged in similar economic activities and who are willing to jointly undertake to repay the loans taken by the group from the banks.

### 3) NABARD FINANCIAL SERVICES LTD.( NABFINS): -

NABARD, while promoting NABFINS has envisaged that NABFINS shall evolve into a model microfinance institution to set standards of governance among the MIFs, operate with exemplary levels of transparency and operate at reasonable/moderate rates of interest.

### 4) MICRO ENTERPRISE DEVELOPMENT PROGRAMME( MEDPs) : -

**NABARD Since 2006** has been supporting need based skill development programmers (MEDPs) for matured SHGs which already have access to finance from banks. MEDPs are on location skill development training programmes which attempt to bridge the skill deficits or facilitate optimization of production activities already pursued by the SHG members.

5) **LIVELIHOOD AND ENTERPRISE DEVELOPMENT PROGRAMMES( LEDPs) : -**

As skill up gradation trainings alone have limited impact on livelihood creation among the SHG members, it was thought prudent to create sustainable livelihoods among SHG members and to attain optimum benefit out of skill up gradation and a new scheme titled livelihood and enterprise development programmes (LEDP) was launched in December 2015. It envisages conduct of livelihood promotion programmes in clusters.

**SALIENT FEATURES OF THE SCHEME: -**

1. An anchor NGO/support agency will be select by LDM in consultation with the DDM, NABARD and DLCC in each of the identified districts for implementation of the project.
2. The scheme would be implemented through bank branches with CBS facility.
3. The identified bank branch will enter into a MoU with the identified NGO/ support agency.
4. The identified NGOs will be eligible for grant assistance up to a maximum of RS10,000 per WSHG.
5. All loans to new WSHGs promoted shall preferable be under the cash credit mode.
6. NABARD will provide need based awareness and capacity developed programmes for key stakeholders under the project.

## E- BANKING

A method of banking in which the customer conduct transaction electronically via the internet. Or

E- Banking is defined as the automated delivery of new and traditional banking products and services directly to customer through electronic, interactive communication channels.

## DEVELOPMENT OF E-BANKING IN INDIA

In India E-Banking is of fairly recent origin. The tradition model for banking has been through branch banking. Only in the early 1990s there has been start of non branch banking services. The good old manual system on which Indian banking depended upon for centuries seem to have no place today the credit of launching internet banking in India goes to ICICI bank Citibank and HDFC bank followed with internet banking services in 1999.

## E- BANKING SERVICES

INDIA BANKS OFFER TO THEIR CUSTOMERS FOLLOWING E- BANKING PRODUCT AND SERVICES:

I. Automated teller machine **(ATM)**
II. Internet banking
III. Mobile banking
IV. Tele banking
V. Electronic fund transfer
VI. Standing instructions
VII. Online mutual fund investment
VIII. Smart cards

i. **Automated Teller Machine (ATM): –** ATM is a modern device introduced by the banks to enable the customers to have access to money day in day out without visiting the bank branches in person. The system is known as "Any Time Money" "Any Where Money".

ii. **Internet Banking: –** Internet banking is an electronic payment system that enable customer of a financial institution to conduct financial transaction on a website operated by the institution.

iii. **Mobile BANKING: –** MOBILE BANKING is a system that allows customers of a financial institution to conduct a number of financial tractions through a mobile device such as a phone or tablet with the use of mobile device, the user can perform mobile banking via call, text, website or application.

iv. **Tele Banking: –** telephone banking is a service provided by a bank or other financial institution that enables customer to perform financial transaction over the telephone, without the need to visit a bank branch or automated teller machine.

v. **Electronic Fund Transfer: –** Electronic funds transfer **(EFT)** is a system of transferring money from one bank account directly. Transactions are processed by the bank through the Automated Clearing House **(ACH)** network.

vi. **Standing Instructions: –** Standing instruction is a way of making an automatic payment of a fixed amount to a loan, bill or credit card at the same time every week or month.

vii. **Online Mutual Funds Investment: –** Mutual fund is a professionally managed trust that pools the saving of many investors and invests them in securities like stock, bonds, short term money market instruments and commodities such as precious metals.

viii. **Smart Cards: -** The banking industry enjoyed the benefits of magnetic stripe card technology for a long time. This technology has revolutionized the payment card industry and increased the level of card security.

**INTERNET BANKING**

INTERNET BANKING system is a method in which a personal computer is connected by a network service provider directly to a host computer system of a bank such that customer service requests can be processed automatically without need for invention by customer service representatives.

**MEANING: - INTERNET BANKIN G** refers to a system allowing individuals to perform banking activities at home, via the internet. Internet banking allows customer to conduct financial transactions on a secure website operated by their retail or virtual bank.

**ADVANTAGES OF INTERNET BANKING**

1. An internet banking account is simple to open and use. One just enters a few answers to question in a form while sitting comfortably in your own home or office.
2. Internet banking costs less. Because there are fewer buildings to maintain, and less involvement by salaried employees, there is a much lower overhead with online banks.
3. Comparing internet banks to get the best deal is easy. In a short time, customer can visit several online banks to compare what they offer in savings and checking account deals as well as their interest rates.
4. Bouncing a cheque should be a thing of the past because it can be monitored in the account online any time, day or night.
5. Banks keep the account balanced using computer and the monthly statement. Customers bank account information can be downloaded into software programs such as Microsoft money or quicken making is easy to reconcile with the account with just a few mouse clicks.
6. With the ability to view the account at anytime, it is easier to catch fraudulent activity in the account before much damage is done.
7. Internet banking offers a great deal more convenience than from a conventional bank.

**DISADVANTAGES OF INTERNET BANKING:-**

1. The regulation requires that financial institution confirm each customer's identity.
2. With hacking and identity theft on the rise, internet banking customers have to place a certain amount of trust in the bank that their account information and personal information are safe.
3. If the customer banks at a traditional bank. They can go to the bank and speak to someone face to face about their problem but, with an internet bank, they will likely spend a lot of time on the phone being passed around and placed on hold.
4. Many internet banks don't have ATMs, which means the customer will have to pay ATM fees. This can cost more money than paying the regular monthly fees at a brick and mortar bank.

**ELECTRONIC CLEARING SERVICES: -**

"ECS is an electronic mode of funds transfer from one bank account to another. It can be used by institutions for making payment such as distribution of dividend interest salary pension among others".

**ELECTRONIC FUND TRANSFERRED (EFT): -**

"Electronic funds transfer **(EFT)** is the electronic transfer of money from one bank account to another, either within a single financial institution or across multiple institutions, via computer- based system, without the direct intervention of bank staff. EFT's are known by a number of names".

**TELE BANKING: -**

Tele banking is a service provided by a bank or other financial institution that enables customer to perform a range of financial transactions over the telephone, without the need to visit a bank branch or automated teller machine.

**FOLLOWING FACILITIES ARE OFFERED: -**

1. Automated balance voice out for the default account.
2. Balanced enquiry and transaction inquiry in all.
3. Inquiry of all term deposit accounts.
4. Statement of account by fax, e-mail, or ordinary mail.
5. Cheque book request.
6. Stop payment which is on-line and instantaneous.
7. Transfer of fund with CBS which is automatic and instantaneous.
8. Utility bill payments.
9. Renewal of term deposit which is automatic and instantaneous.
10. Voice of last five transactions.

**NATIONAL ELECTRONIC FUND TRANSFER: - (NEFT)**

IT is an Indian system of electronic transfer of money from one bank or bank branch to another. The banks or their branches that support such transaction have to participate in the NEFT network.

**FEATURES AND BENEFITS: -**

1. Customer can remit any amount using **NEFT** customer intending to remit money through NEFT has to furnish the following particulars:
   I. **IFSC** (Indian financial system code) of the beneficiary bank/branch.
   II. Full account number of the beneficiary.
   III. Name of the beneficiary.
2. The facility is also available through online mode for all internet banking and mobile banking.
3. For corporate customers bulk upload facility is also available at branches.

**REAL TIME GROSS SETTELMENT (RTGS): -**

It is an electronic form of funds transfer where the transmission takes place on a real time basis. In India, transfer of funds with RTGS is done for high value transaction the minimum amount **being RS 2 lakh.** The beneficiary account receives the funds transferred on a real time basis.

**FEATURES OF RTGS: -**

1. The RTGS system is primarily meant for large value transactions. The minimum amount to be remitted through **RTGS is 2 lakh**. There is no upper ceiling for RTGS transaction.
2. Under normal circumstances the beneficiary are expected to receive the funds in real time as soon as funds are transferred by the remitting bank.
3. The RTGS service window for customer for customer's transaction is available from 9.00 hours to 16.30 hours on week days and from 9.00 hours to 13.30 hours on Saturday for settlement at the RBI end.
4. With a view to rationalized the service charges levied by banks for offering funds transfer through RTGS system.
5. The following information to a bank for effecting a RTGS remittance:
   I. Amount to be remitted.
   II. Remitting customer account number which is o be debited.
   III. Name of the beneficiary bank.
   IV. Name of beneficiary customer.
   V. Sender to receive information, if any.
   VI. The IFSC number of the receiving branch.

**ELECTRONIC CHEQUES: -**

An electronic cheque is an electronic copy of a real cheque, which is then transferred by email. In addition to the cheque's real signature, the transfer must be digitally signed using the sender's private key to authenticate the transfer.

1. **Confidentiality: -** keeping information secret.
2. **Authentication: -** knowing and verifying the origin and/ or destination of information.
3. **Integrity: -** verifying that the data hasn't been tampered with.
4. **Non- repudiation: -** knowing that the data once sent cannot be retracted or denied.

**MEANING OF NON- PERFORMING ASSET: -**

Nonperforming asset is an advance where the interest and/or installment of principal remain unpaid for a period of more than 90days in respect of a loan, overdraft and cash credit etc.

**REASONS FOR NPAS: -**

1. **Default: -** one of the main reasons behind NPA is default by borrowers.
2. **Economic condition: -** the economic condition of a region affected by natural calamities or any other reason may cause NPA.
3. **No more proper risk management: -** speculation is one of the major reasons behind default. Sometimes banks provide loans to borrowers with bad credit history.
4. **Mis management: -** often ill minded borrowers bribe bank officials to get loans with an intention of default.
5. **Diversion of funds: -** many times borrowers divert the borrowed funds to purposes other than mentioned in loan documents. It is very hard to recover from this kind of borrowers.

**CLASSIFICATION OF NPAS: -**

1. **Cash credit and overdraft: -** a cash credit and overdraft account will be treated as NPA if the account remains out of order for a period more than 90days.
2. **Agricultural advances: -** with effect from September 30, 2004, advance granted for agriculture purpose become NPA if interest and/ or installment of principle remains overdue for two crop season in case of short duration crops and a loan granted for long duration crops will be treated as NPA if installment of principal or interest thereon remains overdue for one crop reason.
3. **Exempted assets: -** advances secured against term deposits. National savings certificates, vikas Patras and surrender value of life insurance policies.
4. **Advances under rehabilitation packages**: - where additional facilities are granted to unit under rehabilitation packages approved by ***the board for industrial and financial reconstruction (BIFR).***
5. **Takeout finance: -** in case of takeout finance, if based on record of recovery the account is classified by their lending bank as NPA it should make provision for loan as per guidelines. The provision should be reversed when the account is taken over by taking over institution.
6. **Advances covered by guarantees of DICG/ECGC: -** in the case of advances guaranteed by expert credit guarantee corporation(ECGC) or by deposit insurance and credit guarantee corporation(DICGC), provision is required to be made only for the balance in excess of the amount guaranteed by these corporations.

I. **Standard assets: -** standard assets are those which do not disclose any problems and which do not carry more than normal risk attached to the business. Such assets are not NPA.
II. **Sub standard assets:** - sub standard assets are those which have been classified as NPA for a period not exceeding 12 months.
III. **Doubtful debts: -** doubtful debts are which have remained NPA for a period exceeding 18months.
IV. **Loss assets: -** loss assets are those where loss has been identified by the bank or internal or external auditors or RBI inspection but the amounts have been written off wholly a partly.

**CREDIT CARDS meaning**

Credit is a small plastic card issued by a bank, building society, etc., allowing the holder to purchase goods or services on credit.

**FEATURES OF CREDIT CARDS: -**

1. **Alternative to cash: -** credit card is a better alternative to cash. It removes the worry of caring various currency denominations to pay at the trade counters. It is quite easy and way fast to use a credit card rather than waiting for completion of cash transaction.
2. **Credit limit: -** the credit limit are of two types:
    1. Normal credit limit
    2. Revolving credit limit.

**Normal credit** limit is usual credit given by the bank NBFC at the time of issuing a credit card.

**Revolving credit** limit varies with the financial exposure of the credit cardholder.

3. **Aids payment in domestic and foreign currency:** - credit card aids its cardholder to make payments in any currency of choice. In other words, it gives its holder a unique facility to make payments either in domestic currency or if necessary also in foreign currency that too as and when required.

4. **Record keeping of all transaction: -** credit card issuing entities like banks or NBFCs keeps a complete record of all transaction made by their credit cardholder.

5. **Regular charges: -** regular charges are basic routine charges charged by the credit card issuing entity on the usage of credit by its cardholder.

6**. Grace period: -** The grace period is referred to those minimum numbers of additional days within which a credit cardholder has to pay his card bill incurring interest or financial charges.

7. **Higher fees on cash withdrawals:** - credit issuer makes charges on cash withdrawals made through credit card at the ATM outlet and other desks.

8. **Additional charges for delay in payment: -** The credit card payment is supposed to be made within a due date as mentioned on the bill of a credit card.

9. **Service tax: -** service tax is included in the total amount charged to the credit cardholder.

10. **Bonus points:** - The competition among the credit card providers in unbending.

11**. Gift and other offers: -** At a later stage after crossing pre-determined number of bonus points accumulated bonus points are redeemed either by converting them into gift, cash back offers or any other similar compelling offers.

**PARTIES TO CREDIT CARDS: -**

1. **Card holder: -** The holder of the card used to make a purchase the consumer.
2. **Card issuing: -** The financial institution or other organization that issued the credit card to the card holder.
3. **Merchant: - The** individual or business accepting credit card payment for payment for product or services sold to the card holder.

**ADVANTAGES OF CREDIT CARDS: -**

1. **Proper evidence keeping: -** credit card statement can help to track the expenses.
2. **Low cost loan: -** credit card holder can use revolving credit to save today.
3. **Convenience: -** credit card can save the time and trouble no searching for an ATM or keeping cash on hand.
4. **Instant cash: -** cash advance are quick and convenient, putting cash in the hand when the card holder needs it.
5. **Bonus: -** from frequent flier miles to discount on automobiles, there is a program out there for everyone.
6. **Build positive credit: -** controlled use of a credit card can help to establish credit for the first time or rebuilt credit if you’ve had problem in the past as long as you stay within your means and pay the bills on time.
7. **Purchase protection: -** most credit card companies will handle disputes for you. If a merchant won’t take back a defective product, check with your credit card company.
8. **Balance surfing: -** many credit card companies offer low introductory interest rates. These offers allow you to move balances to lower rate cards.

**LIMITATIONS OF CREDIT CARDS**

1. **High rate of interest: -** cash withdraw through credit cards involve high rate of interest.
2. **Paperwork: -** the credit card holders need to save the receipt and check them against the statement each month.

3. **High cost fees: -** the card holder's purchase will suddenly become much more expensive if he/she carry a balance or miss a payment.
4. **No free lunch: - The** high interest rates and annuls fees associated with cards often outweigh the benefits received.
5. **Deepening your debt: -** Consumers are using credit more than ever before. If you charges freely, you may quickly find yourself in over your heads as your balance increases.
6. **Teaser rates: -** low introductory rates may be an attractive option. But they last only for a limited time.

**SMART CARD**

Smart card is a plastic card with a built in microprocessor, used typically to perform financial transaction.

**RISK IN E- BANKING**

1. Operational risk.
2. Security risk.
3. System architecture and design risk.
4. Reputational risk.
5. Legal risk.
6. Money laundering risk.
7. Strategic risk.
8. Other risk.

1) **Operational risk: -** it arises from fraud, processing errors, system disruptions or other unanticipated events resulting in the institution inability to deliver products or services.
2) **Security risk: -** It arises on account of unauthorized access to a bank's critical information stores like accounting system.
3) **System architecture and design risk: -** It is an n important factor in managing various kinds of operational and security risks.
4) **Reputational risk: -** It is the risk of getting significant negative public opinion, which may result in a critical loss of funding or customers.
5) **Legal risk: -** It is the risk of no compliance with legal or regulatory requirements. The legal risks are directly related to electronic banking and they are increased as its use is extended.
6) **Money laundering: -** It is the practice of engaging in financial transaction in order to conceal the identity.
7) **Strategic risk: - E** -banking is relatively new and as a result there can be a lack of understanding among senior management about its potential and implications.

# PAYING BANKER

**MEANING: -** paying banker is one upon whom a cheque is drawn or a banker who is liable to pay the value of cheque to the customer.

**DEFINITION: -** The paying banker is defined as the banker to whom the order to pay, where the order takes the form of a cheque is addressed when a person open an account with a particular branch of bank.

**FUNCTION/PRECAUTION TO TAKEN BY A PAYING BANKER:-**

A. **Precaution regarding form of cheque: -** it should be proper form. The negotiable instrument Act defines a cheque but does not given the form of cheque. Nor does it require that a cheque should be drawn on the printed from issued by the bank.
B. **Precaution regarding date of cheque: - A cheque must bear** a date, because the mandate of the customer to the banker given in the cheque becomes legally effective on the date mentioned there in.

   **1.Post dated:- Sir john Paget says** that "A banker who pays a post dated cheque before the outside declared date stands a very poor chance of being able to debit his customer with it in any conceivable circumstance if the customer choose to object to be debited".

   **2. Anti dated or Stale cheque : -** it is also known as an "out of date cheque" it is one which has been in circulation for an unreasonably long period. Generally, a cheque is considered stale when it has been in circulation for more than 6 months.

C. **Precaution regarding amount of cheque**:- "If the amount, undertaken or ordered to be paid, is stated differently in figures and words, the amount stated in words shall be the words undertaken or ordered to be paid"
D. **Precaution regarding "sufficiency of fund" of the customer: -** there should be sufficient funds in the account of customer for payment of **the** cheque. It is to be noted that the cheque is to be fully and in part and therefore inadequacy of fund in customer account will result in the dishonour of the cheque.
E. **Precaution regarding payment at the branch: -** The paying banker should examine whether the cheque is payable at his branch, because no other branch or office other than the one on whom the cheque is drawn should pay the cheque.
F. **Precaution regarding drawer's signature: -** it is legal duty of the paying banker to confirm the signature of his customer. If the drawer signature has not been corresponding with the specimen signature and banker honour the cheque, it will not be entitle to debit the customer account with the payment.

G. **<u>Precaution regarding material alteration:-</u>** A material alteration is one which changes or alters in any way the operation of the instrument and liabilities of the parties therein, irrespective of the fact whether the change is prejudicial to the payee or not.

H. **<u>Precaution regarding mutilated cheques</u>**: - A mutilated cheque is one which is torn into two or more pieces. Before making payment of a mutilated cheque the banker should examine it carefully to ascertain if the cheque was mutilated with the intention to cancel it.

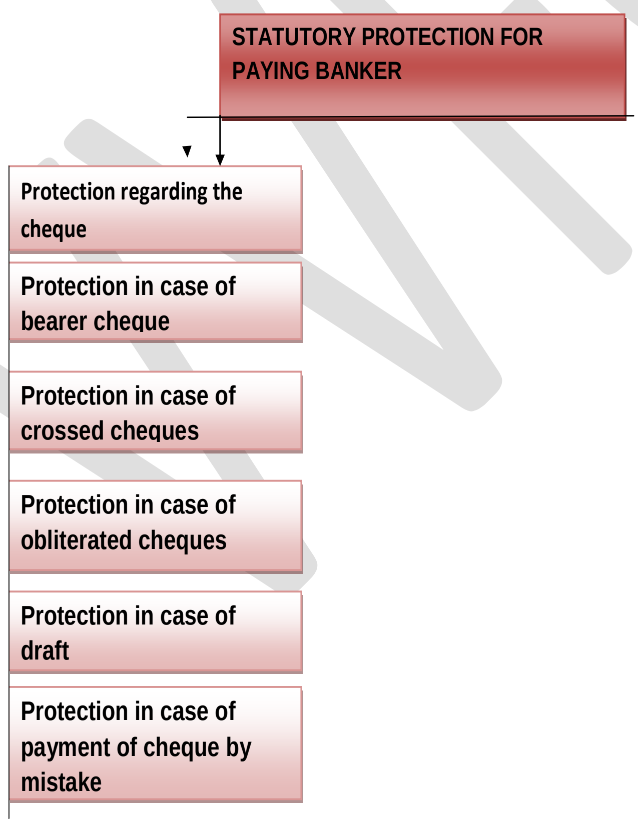
I. **<u>Precaution regarding proper endorsement: -</u>** An endorsement is a signature of the endorser of an instrument with or without additional words or statement.

J. **<u>Precaution regarding order of payment: -</u>** The cheque must be paid in chronological order of their by the bank. The serial number of their issue or date is not significant in this respect.

K. **<u>Precaution regarding banking hours: -</u>** According to Sec65, of negotiable instrument Act, 1881, states:" A cheque must be presented to the paying banker for payment within the bank hours."

L. **<u>Precaution regarding to mode of payment</u>**: - According to Sec64 of negotiable instrument Act 1881, states:"where authorised by agreement or usage a presented for through the post office by means of a registered letter is sufficient".

## <u>STATUTORY PROTECTION TO THE PAYING BANKER</u>



**Protection regarding the cheque:-** in case of an order sec85(1) of the NI Act provides statutory protection paying banker as follows, where a cheque payable to order to purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

- **A. Regular endorsement: -** According to sec 85(1) of the Act the endorsement should be regular.
- **B. Payment in due course: -** According to sec 10 of the Act the cheque should be paid in due course.

**Protection in case of bearer cheques: - section 85(2)** of the NI Act, 1881 states, "where as cheques originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, not withstanding any endorsement purports to restrict or exclude further negotiable."

**Protection in case of crossed cheques: -** Regarding payment of crossed cheque, the paying banker gets the protection under section 128 of the NI Act 1881 "where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and the drawer thereof shall be entitled respectively to the same rights and placed in the same position if the amount of the cheque had been paid to and received by the true owner thereof".

**Protection in case of obliterated cheques: -** payment of instrument on which alteration is not apparent a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, and paying the same according to the apparent tenor thereof by a person or payment and otherwise in due course, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

**PAYMENT IN DUE COURSE:-**

Payment in due course is the process of giving funds to the holder of a promissory note bill of exchange or cheque when due, without any knowledge that the document had been acquired by fraud or that holder did not have valid title. The true owner of the bill or note cannot also demand payment but must look to the recipient of the funds.

**DEFINITION: -** Section 10 of the NI Act 1881 defines as payment in due course means "in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances with do not afford a reasonable ground for believing that he is not entitle to receive payment of a amount there in mention.

**The other important provision relating to payment in due course is the following:-**

1. The payment should be made in accordance with the apparent tenor of the instrument i.e. according to the true intention of the parties.
2. The payment should be made in good faith and without negligence.
3. The payment should be made to the person in possession of the instrument in circumstances.
4. If payment is made before maturity, payment doesn't discharge the instrument.

5. Payment to endorsee that is not in possession of the instrument is not payment to a person other than the holder is at the risk of the party so paying if the person wasn't authorised by the holder to receive payment.
6. Payment to a person by the debtor who knows that such person stole it, is not payment in due course, as such payment is not in good faith.

## DISHONOUR OF CHEQUE

**Meaning:- "According to sec 92 of NI Act 1881**" "A Cheque is set to be dishonour by non payment when the drawee of the cheque makes default in payment upon being duly require to pay the same".

**GROUND FOR DISHONOURING OF CHEQUE:-**

The circumstances under which banker refuse to honour customers cheques for payment or honour of his customer cheques is terminated are discussed under the following **two heads**

**1. Circumstances when the banker *may* refuse the payment.**

**2. Circumstances when the banker *must* refuse the payment.**

### 1. CIRCUMSTANCES WHEN THE MAY REFUSE THE PAYMENT:-

In the following circumstances, a banker may refuse to honour the cheques of his customers:

1) **When the cheque is post-dated:-** A cheque is supposed to be paid on a date mentioned on it, and not before that date. When a cheque is presented before the date mentioned on it, the banker may refuse to make payment thereon. *For example,* when a cheque dated 15 August, 2007 is presented on 10 August, the banker has a right to refuse the payment thereon and it will not amount to dishonour of a cheque.
2) **When the cheque is out-dated or stale: -** Ordinarily, a cheque is supposed to be presented for payment within a period of six months from the date of issue. After lapse of six months, the cheque is considered as outdated or stale and the banker may refuse to honour the same.
3) **When the cheque is ambiguous or of doubtful validity:** - The validity of a cheque may be doubted when it is not properly drawn.
   *For example,* amount on the cheque is different in words and figures or its endorsements are not proper and regular or it is signed by only by one person when it is supposed to be signed by the two persons, etc.
4) **When the cheque is mutilated: -** When the cheque is mutilated e.g., torn into two pieces, in such cases, they may refuse the payment.

5) **When a cheque in not duly presented for payment:**- when a cheque is not presented in the manner it is required to be presented, *for example,* if the cheque is presented after the banking hours, or is presented at a branch different from the one on which it has been drawn.
6) **When the funds in the customer's account are insufficient: -** when the balance in the customer's account along with the overdraft arrangement, if any, is not sufficient to pay the amount of the cheque, the banker has a right to refuse the payment thereupon. *For example,* 'A' a customer has Rs.4, 000/- to his credit in a bank account. He draw a cheque for Rs.4, 500/- which was presented for payment. In this case, the banker is not supposed to make payment of Rs.4, 000/- to the holder of cheque.
7) **When the customer's signature does not agree: -** when the customer's signature on the cheque does not agree with his signature in the bank record, in such cases, the banker may refuse the payment of his cheque.
8) **When the funds in customer's account are not applicable to the payment of the cheque: -** when a customer has money in the bank in the form of fixed deposit, recurring deposit, or any other funds over which the bank has marked or signed lien, and such customer issues a cheque against these funds, the banker may refuse the payment of a such cheque as these funds are not applicable to the payment of the cheques.
9) **When the account is in joint names: -** when the bank account is in the joint name of two or more persons and the cheque is required to be signed by all the joint holders. In such cases, if the cheque is not signed by all of them, the banker may refuse the payment on such a cheque.
10) **When the banker has a claim for set-off: -** when a banker has certain claims against his customer, and the customer has some funds in his account with the banker, in such cases, the banker can set-off the amount of his claim against his customer's funds, and may refuse the payment of a cheque against such funds.

2. **Circumstances when the banker must refuse the payment:-**
    1) **When the customer has countermanded (i.e., stop) Payment: -** The term 'countermand' means the issue of instruction to the banker not to pay a particular cheque. Thus, where a customer issues instruction to the banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'.
    2) **When the customer has died: -** when the banker receives notice of customer's death, in such cases, he must refuse the payment of the cheque presented after the notice of death.
    3) **When the customer has become insolvent: -** When the banker receives the notice of customer's insolvency, in such cases also, he must refuse the payment of the cheques presented after the notice.
    4) **When the customer has become a person of unsound mind (i.e., insane):-** when the banker receives the notice that his customer has become insane, in such cases also, he must refuse payment of the cheque presented after notice.

5) **<u>When a Garnishee order has been received by the maker:</u>** - 'Garnishee order' is an order of the court by which court attached the balance account. When the banker receives such order, then he is bound to refuse the payment of the customer's cheque.
6) **<u>When the customer has assigned the money of his account: -</u>** when a customer assigned the money of his account to some other person or account or for any other particular thing and gives notice thereof to the banker, the banker is not supposed to make payment, and he must refuse to make payment of cheques presented after the notice.
7) **<u>When holder's title is defective:</u>** - when a banker has knowledge that the title of the holder of cheque is defective, he must refuse to pay the same. *For example,* if the banker knows that the cheque presented by a person is a stolen cheque he must not honour the same.
8) **<u>When the cheque is lost:</u>** - when the drawer informs the banker that a particular cheque is lost the banker is not supposed to honour of the cheque, and he must refuse the payment of that cheque.
9) **<u>When the cheque is irregular:</u>** - when a cheque is irregular on the face of it. *For example,* if it is materially altered or if the signature of the drawer are forget or the date on it is some hypothetical date, etc., the banker must not pay such cheque.
10) **<u>When apparent tenor of electronic image and truncated cheque is different:</u>** - when the banker find a difference in the electronic image of a cheque and its physical counterpart (i.e., truncated paper cheque), it would amount to material alteration, and banker must refuse the payment thereon.
11) **<u>When the customer closes his account:</u>** - when a customer gives notice to the banker for closure of his account, the banker must not make any payment on the cheque drawn there from after getting this notice.

**<u>CONSEQUENCES OF WRONGFUL DISHONOUR OF CHEQUES</u>**

**The various consequences for wrongful dishonour of cheques are as follows:-**

**I.** The damages that the banker has to pay will be more in case of wrongful dishonour of cheques of the trader-customer.

*Example:* New central Hall vs. United commercial Bank ltd.

**II.** The amount of damages claimed by the customer need not depend on the amount of the cheque. It means the smaller is the amount of the cheque dishonoured, the greater will be the amount of damages.

**III.** The customer can declare substantial general damages without having any monetary loss.

**IV.** In case of trustee account normally substantial general damages will be awarded for wrongful dishonour.

**V.** In case of non trader customer, the damage will be nominal.

**VI.** The particular damages are awarded for the financial loss incurred by the customer as a consequence of wrongful dishonour, provided the loss must be proved by the customer.