Definition of Bank

- According to Sir John Paget, “No person or body corporate or otherwise, can be a **banker** who does not (i) take deposit, accounts, (ii) take current accounts, (iii) issue and pay cheques, and (iv) collect cheques, crossed and uncrossed, for his customers.”
- This definition points out the four essential functions of the banking business.
- Sir John Paget also lays emphasis on the performance of the above functions in a regular and recognized manner. According to him

- “one claiming to be a **banker** must profess himself to be one and the public must accept his as such, his main business must be that of banking from which, generally, he should be able to earn his living.”
- The above-mentioned functions are considered as the essential functions of a **banker** but this definition does not include the other functions which are now being performed by modern bankers.

Halsbury's Law of England

- A **Banker** is an individual, partnership or corporation, whose sole or predominating business is banking, that is, the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer.

Definitions under Section 5(b)&(C) Of the Banking Regulation Act

- The term ***'Banking'*** is defined as "accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise"
- A ***banking company*** is defined as a company which transacts the business of banking in India. The Banking Regulation Act defines the business of banking by stating the essential functions of a banker. It also states the various other businesses a banking company may be engaged in and prohibits certain businesses to be preformed by it

Salient features of the definition

- (i) A **<u>banking company</u>** must perform both of the essential functions, viz., (a) accepting of deposits, and (b) lending or investing the same. If the purpose of accepting of deposits is not to lend or invest, the business will not be called **<u>banking business</u>**.
- The explanation to Section 5(c) reads “Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;”

Salient features of the definition

- It makes it clear that any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business, as such manufacturer or trader shall not be deemed to transact the business of banking.

Salient features of the definition

- (ii) The phrase ‘deposit of money from the public’ is significant.

- The banker accepts deposits of money and not anything else. The word ‘public’ implies that a banker accepts deposits from anyone who offers his/her money for such purpose.
- The banker however, can refuse to open an account in the name of the person who is considered as an undesirable person, e.g., a thief, robber, etc.
- Acceptance of deposits should be the known business of a banker. The money-lenders and indigenous bankers depend on their own resources and do not accept deposits from the public. If they ask for money from their friends or relatives in case of need, such money is not deemed as deposit accepted from the public.

Salient features of the definition

- (iii) The definition also specifies the time and mode of withdrawal of the deposits.
- The deposited money should be repayable to the depositor on demand made by the latter or according to the agreement reached between the two parties.
- The essential feature of banking business is that the banker **does nor refund the money on his own accord, even if the period for which it was deposited expires.**
- The depositor must make a demand for the same.
- The Act also specified that the withdrawal should be **effected through an order, cheque, draft or otherwise.**
- It implies that the demand should be made in a **proper manner** and through an instrument in writing and not merely by verbal order or a telephonic message

Salient features of the definition

- It is thus clear that the underlying principle of the business is that the resources mobilized through the acceptance of deposits must constitute the main stream of funds which are to be utilized for lending or investment purposes.
- The banker is, thus, an intermediary and deals with the money belonging to the public. A number of other institutions, which also deal with money, are not designated as banking institutions, because they do not fulfill all the above-mentioned pre-requisites.
- The specialized financial institutions, e.g., Industrial Finance Corporation of India (IFCI) and State Finance Corporation (SFC), are not banks because they do not accept the deposits in the prescribed manner.
- The essence of banking business lies in the two essential functions. This is also evident from the definition given by Sir John Paget.

Interpretation of Sec. 5 (b)

- Section 5 (b) of the Banking Regulations Act, 1949 defines 'banking as accepting for the purpose of lending or investment, of deposits of money from the pubic, repayable on demand or 'otherwise and withdrawal by cheques, drafts, order or otherwise.’

Interpretation of Sec. 5 (b)

Merely because the petitioners the co-operative societies in question are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co-operative societies are not established for the purpose of doing "banking" as defined in Sec. 5 (b) of the Banking Regulation Act, 1949.

Interpretation of Sec. 5 (b)

- The essential characteristic of banking, namely, the power to receive deposits from the public which are repayable in the manner indicated in Sec. 5 (1) (b) of the Act is absent and merely the power of granting loans is retained and exercised that does not make the company a banking company. Lending of money may be one phase of a banking business but it is not the main phase or the distinguishing phase.

Sec.7 "bank", banker", "banking", "banking company”

- 7. **Use of words** "bank", "banker", "banking", or "banking company
- (1) No company other than a banking company shall use as part of its name 4 [or in connection with its business] any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.
- (2) No firm, individual or group of individuals shall, for the purpose of carrying on any business use as part .of its or his name any of the words "bank", "banking" or "banking company".

(3) Nothing in this section shall apply to—

- (a) subsidiary to a banking company formed for one or more of the purposes mentioned in sub-section (1) of Sec. 19, whose name indicates that it is subsidiary of that banking company;
- (b) any association of banks formed for protection of Companies Act, 1956 (1 of 1956).

Sec.7 "bank", banker", "banking", "banking company”

- Name must include the word ‘Bank’, ‘Banker’ or ‘Banking’. Section 7 makes it essential for every company carrying on the business of baking in India to use as part of its name at least one of the words-bank, banker, banker, banking or banking company. Besides, it prohibits any other company of firm, individual or group of individuals, from using any of these words as parts of its/his name.
- Section 7 has been amended in 1983 with the effect that any of these words cannot be used by any such company even “in connection with its business.”

DEFINITION OF CUSTOMER

- The term ‘customer’ of a bank is not defined by law.
- Ordinarily, a person who has an account in a bank is considered its customer.
- Banking experts and judgments in the past, however, used to qualify this statement by laying emphasis on the period for which such account had actually been maintained with the bank.

DEFINITION OF CUSTOMER

- In Sir John’s view is “to constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business”.
- This definition of a customer of a bank lays emphasis on the duration of the dealings between the banker and the customers and is, therefore, called the **‘duration theory**’.
- According to this view point, a person does not become a customer of the banker on the opening of an account, he must have been accustomed to deal with the banker before he is designated as a customer.

DEFINITION OF CUSTOMER

- The above mentioned emphasis on the duration of the account is now discarded.

- Thus in **Ladbroke V. Todd** it was said that the relation of banker and customer begins as soon as the first cheque is paid in and accepted for collection.

- This view was further supported in **Commissioners of Taxation V. English, Scottish and Australian Bank Ltd.** where the Privy Council said that “the word customer signifies a relationship of which duration is not of the essence.”

DEFINITION OF CUSTOMER

- According to Dr. Hart, “a customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such”

- Supporting this viewpoint, the Kerela High Court observed in **Central Bank of India Ltd. Vs. Gopinathan Nair(AIR 1979 Ker. 74):** “Broadly speaking, a customer is a person who has the habit of resorting to the same place or person to do business. So for as banking transactions are concerned he is a person whose money has been accepted on the footing that the banker will honour up to the amount standing to his credit, **irrespective of his connection being of short or long standing”**

DEFINITION OF CUSTOMER

- Thus, a person who has a bank account in his name and for whom the banker undertakes to provide the facilities as a banker, is considered to be a customer. It is not essential that the account must have been operated upon for some time. Even a single deposit in the account will be sufficient to designate a person as customer of the banker

DEFINITION OF CUSTOMER

- Thus to constitute a customer the following essential requisites must be fulfilled:
- A bank account - savings, current or fixed deposit - must be opened in his name by making necessary deposit of money, and
- The dealing between the banker and the customer must be of the nature of banking business.

DEFINITION OF CUSTOMER

- A customer of a banker need not necessarily be a person.
- A firm, joint stock company, a society or any separate legal entity including a Government department and a corporation incorporated by or under any law may be a customer.

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

- **General Relationship Between Banker and Customer**
- The relationship between a banker and his Customer essentially flows from the contract.
- It is fundamentally the relationship of **debtor and creditor**, the respective positions being determined by the state of the account.
- However in relation to other services rendered by banker the relationship may be:

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

- Relationship of Agent and Principal
- Relationship of Trustee and Beneficiary
- Relationship of Bailee and Bailor
- Relationship of Pawnee and Pawnor
- Relationship of Lessor and Lessee
- Relationship of Guarantor and Beneficiary
- Relationship of Mortgagee and Mortgagor
- Relationship of Trader and Consumer

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- According to Sir John Paget “The relation of a banker and a customer is primarily that of a debtor and a creditor, the respective position being determined by the existing state of the account. Instead of the money being set apart in a safe room, it is replaced by a debt due from the banker. The money deposited by a customer with the banker becomes the latter’s property and is absolutely at his disposal".
- Hence, there exists a relationship of debtor and creditor; the banker, being the debtor, is bound to repay the deposit as and when the customer asks for it.

Judgment of House of Lords in Foley v. Hill (1843 to 1860) All E.R. 16 is the most quoted judgment

- **<u>EXTRACT FROM THE JUDGMENT</u>** Money, when paid into a bank, ceases altogether to be the money of the owner, it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the bankers, is money known by the customer to be placed there for the purpose of being under the control of the banker; It is then the bankers money; he is known to deal with it as his own; he makes what profit on it he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places.

<u>FOLEY v. HILL EXTRACT FROM THE JUDGMENT</u>

- He is guilty of no breach of trust in employing it, he is not answerable to the customer if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it or deal with it as the property of the customer, but he is, of course, answerable for the amount because he has contracted, having received that money, to repay to the customer, when demanded, a sum equivalent to that paid into his hands. That has been the subject of discussion in various cases, and that has been established to be the relative situation of banker and customer. **<u>That being established, to be the relative situation of banker and customer, the banker is not an agent or factor, but he is a debtor.</u>**

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- **The Banker as a Privileged Debtor:** A banker as a debtor is not the same as that of an ordinary commercial debtor.
- An ordinary commercial debtor's duty is to seek out the creditor and pay the money. But, a banker as a debtor, enjoys many privileges, and hence, he is called a privileged debtor.
- The privileges enjoyed by a banker have been listed below:

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- **<u>1: The creditor must demand payment:</u>**
- In case of ordinary commercial debt the debtor pays the amount on the specified date or earlier of whenever demanded by the creditor as per the terms of the contract. But in case of a deposit in the bank, the debtor/baker is not required to repay the amount on his own accord.
- <u>In Joachin Son Vs. Swiss Banking Corporation</u>, Atkins L.J held that an express demand by a customer in writing is essential to get back the deposited money.
- It is essential that the depositor (creditor) must make a demand for the payment of the deposit in the proper manner. This difference is up to the fact that a banker is not an ordinary debtor, he accepts the deposited with an additional obligation to honour his customer’s cheques.

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

1.DEBTOR AND CREDITOR

- **The creditor must demand payment** If he returns the deposited amount on his own accord by closing the account, some of the cheques issued by the depositor might be dishonoured and his reputation might be adversely affected. The depositor makes the deposit for his convenience, apart from his motive to earn an income (except current account).
- Demand by the creditor is, therefore, essential for the refund of the deposited money. Thus deposit made by a customer with his banker differs substantially from an ordinary debt**.**

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- **2:Proper place and proper time:** The demand by the creditor must be made at the proper place and in proper time. A commercial bank, having a number of branches, is considered to be one entity, but the depositor enters into relationship with only that branch where an account is opened in his name. His demand for the repayment of deposit must be made at the same branch of the bank concerned otherwise the banker is not bound to honour his commitment.
- In Claire & Co. Vs. Dresden Bank, it was held that locality is an essential element in the banking debt.
- In Arab Bank Vs. Barclays Bank, it was held that a banker is liable to honour a cheque provided it was presented during banking hours.

1.DEBTOR AND CREDITOR

- However, the customer may make special arrangement with the banker for the repayment of the deposited money at some other branch. For example, in case of bank drafts, traveller's cheques etc., the branch receiving the money undertakes to repay it at a specified branch or any branch of the bank. Portable a/c ATMs etc. also

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- **3.Without Security:** The banker is able to get the deposited money without giving any security to the customer, while it is not possible in the case of an ordinary debtor. Thus, the customer is acting only as an unsecured creditor *as he does not have any charge on any asset of the bank.*
- It is a privilege given to the banker.
- (Deposit insurance scheme)

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- **4.Applicability of Art.22 of limitation act:** The law of limitation which is applicable to all debts lays down that a debt will become a bad one after the expiry of three years from the date of the loan.
- But it is 3 years from demand for a banking debt. Practically, when the demand is made, the banker will return the money immediately and so this law generally does not apply to a banking debt.

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

1.DEBTOR AND CREDITOR

- **<u>5.Right to Combine Accounts:</u>** the banker as a debtor has the right to combine the accounts of a customer provided he has two or more accounts in his name and in the same capacity. This is another of his privileges.
- **<u>6 Form:</u>** According to the statutory definition of banking, deposits are withdrawable by cheques, drafts, order or otherwise. It means that the demand for the refund of money deposited must be made through a cheque or an order as per the common usage amongst the bankers. In other words, the demand should not be made verbally or through a telephonic message or in any such manner.

RELATIONSHIP BETWEEN BANKER AND CUSTOMER
1.DEBTOR AND CREDITOR

- **7:Terms:**The debtor has to follow the terms and conditions of bank mentioned in the account opening form.