CENTRAL BANKING: INDIAN SPECIFIC ISSUES

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Reserve Bank is the regulator of the banking system, in the presence of other regulators in the country like the SEBI, IRDA, etc., the issue of division of functions among the various regulatory authorities arose.

BANKING REGULATION ACT

The enactment of Banking Regulation Act marks an important development in the Indian Financial system. The Act provides statutory directions for the conduct of banks business and its regulation by the Reserve Bank of India.

Broad Coverage of the Banking Regulation Act

The Act broadly covers the following five parts:

- **The Part I** of the Act deals with short title, extent and commencement.
- **Part II** deals with the forms of business, in which banking companies, may engage, the constitution and governance aspects, requirements relating to minimum paid up capital and reserves, statutory and other requirements with which the banks may have to comply, etc.
- **Part III** of the Banking Regulation Act deals with suspension of Business and Winding up of Banking Companies,
- **Part IV** of the Banking Regulation Act deals with miscellaneous aspects like penalties, application of fines, change of name by the banking company etc.

- **Part V** deals with the application of the Act to Co-operative banks.

SECTION	IMPORTANT PROVISIONS OF BANKING REGULATIONS ACT -1949
Sec 5(B)	**Banking**: banking means the acceptance of deposit of money for the purpose of lending or investment from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.
Sec 7	Use of words Bank, Banker, Banking or Banking Company
Sec 10	Employment of Managing Agents, office of Directors, Chairman / Managing Director etc.
Sec 11	Paid up Capital and Reserve Requirement.
Sec 12	Capital Structure - The ratio of authorized, subscribed and paid-up capital must be minimum 4:2:1
Sec 13	Restriction on Commission, Brokerage and Discount. (Restricted to 2.5% of paid-up value of Single unit)
Sec 15	**Payment of Dividend:** Prohibits payment of dividend by any bank until all of its capitalized expenses have been completely written off.
Sec 17(1)	Reserve Fund - equal to 25% of net profit.
Sec 18	Cash Reserve to be maintained by non-scheduled banks.
Sec 19(2)	Holding of Shares of any Company not exceeding 30% of paid-up share capital of that company or 30% of its own paid-up capital and reserves, whichever is less
Sec 20	Restriction on advances against own shares.
Sec 21	RBI given Powers to Control Advances by banks.
Sec 22	Licensing of Banking Companies
Sec 24	Maintenance of SLR.
Sec 26	Return (statement) of Unclaimed Deposits (10 years) - as on 1st Dec. annually within 30 days of the end of calendar

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	year.
Sec 29	Accounts and Balance Sheet as per format given in 3rd Schedule of the Act.
Sec 30	Mandatory Audit of Balance sheet.
Sec 35	**Inspection:** Empowers RBI to undertake inspection of banks
Sec 45Z	Provision for Return of Paid Instruments to Customer.
Sec 45 ZA/ ZC/ ZE	Nomination: For nomination in Deposit accounts / Safe custody Locker accounts respectively

Foreign Exchange Management Act, 1999

The reforms in industrial and trade policies initiated in the early 1990s, consistent with the changing international, economic and trade relations, gave rise to the need for a more conducive climate for **increased inflow of foreign investment** and **capital to accelerate** the pace of **industrial growth and export promotion**.

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

- FEMA was implemented in India w.e.f. 1-6-2000.
- To facilitate external trade and payments.
- FEMA defines certain terms such as:

Capital Account Transaction – Section 6, 2(e)

One that alters the assets or liabilities including contingent liabilities, outside India of a person resident in India or asset or liability in India, of a person's resident outside India.

Current Account Transaction section 5

Other than a capital account transaction and include payments due in connection with foreign trade, other current business services and short-term banking and credit facilities in ordinary course of business.

CAPITAL ACCOUNT TRANSACTION	CURRENT ACCOUNT TRANSACTION
Capital account transactions are restricted, and more rules and regulations are to be followed	Current account transactions are less restrictive, liberal in nature.
In CAT Items are regarding balance sheet	In CUT Items are regarding profit and loss account
It is real account in nature	It is Nominal account in nature
Long-term banking and credit facilities	Short-term banking and credit facilities
The regulation of CAT is done by RBI with consultation of central govt.	The regulation of CUT is done by central govt. with consultation of RBI

THE BANKING OMBUDSMAN SCHEME, 2006

Who is Ombudsman?

- Ombudsman is an appellate body where customers can escalate complaints if the financial institution fails to address the complaint within 30 days.
- Even when customers are not satisfied with the resolution offered or explanation given by the financial institution, they can approach the ombudsman.

- **The scheme has been developed by the RBI under powers conferred upon it by Sec 35-A of Banking Regulation Act-1949**
- **Eligibility:** any person whose grievance against a bank is not resolved to his satisfaction by that bank within a period of **30 days**, he can approach the Banking Ombudsman, provided the subject matter of the complaint is covered under the scheme.
- **Scope**: It covers all commercial banks, regional rural banks, and schedule primary co-op banks.

Number of banking ombudsman is 22.

Appellate Authority:

- RBI's Executive Director-in charge of Consumer Education and Protection Department would be the Appellate Authority under the integrated scheme.

Integrated ombudsman scheme, 2021 merged the following schemes?

I. Banking ombudsman scheme, 2006
II. Ombudsman scheme for NBFC, 2018
III. Ombudsman scheme for digital transaction, 2019

DEBT RECOVERY TRIBUNAL (DRT)

- In 1981 a committee under chairmanship of shri T Tiwari had suggested setting up of special tribunals for recovery of debts owing to banks/Financial institutions.
- Narasimhan committee includes the recommendation of Tiwari committee.

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- In 1993, parliament enacted the RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTION (RDDBFI).
- This is popularly known as DRT (Debt recovery tribunal) act.
- DRT act was applicable from **24.06.1993**
- DRT is **quasi-judicial** in nature.

DRT	DRAT
Headed by Presiding officer	Headed by Chairperson
PO should have qualification equal to the rank of Judge of District court	Chairperson Should have qualification equal to the rank of high court judge OR Person having Experience of 3 years as PO of a DRTs OR Member of Indian Legal Services and has held post in Grade 1 of that service for at least three years may also be appointed as chairperson of DRAT
PO is assisted by registrar and recovery officer	

SARFAESI - Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002

- SARFAESI act come into force on **21 June 2002.**
- In the event of default by a borrower, a secured creditor will have the following powers under SARFAESI:

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- Take possession, sell, or lease the secured assets
- Take over the management of the business
- Appoint a manager (powers vested with chief manager in banks)
- Recover money payable by 3rd parties to the borrower

SARFAESI Act is enacted in addition to DRT (RDB Act). Here are the key differences between them.

I. Under RDB Act, Recovery of debts is made through **quasi-judicial bodies** called **Debt Recovery Tribunals**. Whereas, under SARFAESI, **collateral security** can be recovered by the **Bank/NBFC** itself without approaching any court or tribunal.
II. Under RDB Act, **any debt can be recovered.** Whereas, under SARFAESI, **only secured debts** i.e., debts secured by way of underlying assets can be recovered.
III. Minimum debt amount to approach a DRT is **20 lakhs.** Whereas minimum debt amount eligible for recovery under SARFAESI is **1 lakh.**

Loans which are not eligible under SARFAESI Act

- Loan with outstanding balance up to Rs. 100000
- Where the amount due is less than 20% of the principal and interest.
- Loan secured by pledge, lien and by security of deposits.
- Where limitation is expired.
- Agriculture land cannot be sold.
- Where security is not charged to the bank or charge not registered with CERSAI (**Central Registry of Securitisation Asset Reconstruction and Security Interest of India** (CERSAI) is set up under section 20 of the SARFAESI Act)

INSTITUTIONS SET UP BY RBI

One of the primary tasks of Central Banks in developing countries is to build a well-differentiated institutional credit structure.

National Bank for Agricultural and Rural Development (NABARD)

For better co-ordination among the various agencies of rural credit and the rural credit policies relating to short, medium and long-term financing of agricultural and allied activities, the National Bank for Agriculture and Rural Development (NABARD) was set up on July 12, 1982.

Industrial Development Bank of India (IDBI)

- Industrial Development bank of India (IDBI) was constituted under Industrial Development Bank of India Act, 1964 as a Development Financial Institution and came into being as on July 01, 1964.
- As an apex institution, seeks to fulfil the two-fold objective of supplementing and coordinating the activities of the existing institutions in the field of industrial finance.

The functions of IDBI are:

- As coordinating agency,
- As a financing agency providing direct financial assistance to industrial concerns,
- As a refinancing agency, and
- As an agency undertaking promotional industrial activities.

Unit Trust of India (UTI)

- To assist the small investor in finding a safe and remunerative investment, and also to facilitate mobilization of savings for industrial development, the UTI was established in February, 1964.
- UTI was established as a Trust by the Government of India in February 1964 in terms of the UTI Act in 1963.

The aims and objectives of UTI:

- To stimulate saving among the middle income and low-income groups and to mobilize these savings for investment purpose.

Exim Bank

- Export-Import Bank of India is the premier export finance institution of the country, set up in 1982 under the Export-Import Bank of India Act 1981.
- Government of India launched the institution with a mandate, not just to enhance exports from India, but to integrate the country's foreign trade and investment with the overall economic growth.

National Housing Bank (NHB)

- The National Housing Policy, 1988 envisaged the setting up of NHB as the Apex level institution for housing.
- In pursuance of the above, NHB was set up on July 9, 1988 under the National Housing Bank Act 1987.
- NHB is wholly owned by Reserve Bank of India, which contributed the entire paid-up capital.

Objectives

NHB has been established to achieve, the following objectives:

- To promote a sound, healthy, viable and cost-effective housing finance system to cater to all segments of the population and to integrate the housing finance system with the overall financial system.
- To promote a network of dedicated housing finance institutions to adequately serve various regions and different income groups.
- To make housing credit more affordable.
- To regulate the activities of housing finance companies based on regulatory and supervisory authority derived under the Act.

Clearing Corporation of India Ltd. (CCIL)

The Clearing Corporation of India Ltd. (CCIL) was set up in April, 2001 for providing exclusive clearing and settlement for transactions in Money, Government Securities and Foreign Exchange.

The prime objective has been to:

- Improve efficiency in the transaction settlement process
- Protect the financial system from shocks emanating from operations related issues
- To undertake other related activities that would help to broaden and deepen the money, debt and forex markets in the country.

National Payments Corporation of India (NPCI)

- Reserve Bank of India, after setting up of the **Board for Payment and Settlement Systems in 2005**, released a vision document incorporating to set up an institution for all the **RETAIL PAYMENT SYSTEMS** in the country.

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- This organisation was founded in the year 2008 under the Payment and Settlement Systems Act, 2007. NPCI has been incorporated as a 'not for profit' company under section 8 of Companies Act 2013.

QUESTION AND ANSWER

Q1. Section 8 of Banking Regulation Act is related with ___________?

Prohibited business

Q2. Section 35A, banking regulation act 1949 empowers RBI for __________?

To issue directions in public interest

Q3. which of the following section covering Control Over Advances by RBI?

21

Q4. Any person aggrieved by the order of Recovery officer may appeal to ____ within _______days from the date of copy of order.

Presiding officer of DRT, within 30 days

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Q5. If there is any clerical and arithmetical mistake in the recovery certificate this can be rectified by __________?

Presiding officer of the Tribunal

Q6. Banks are eligible to sell the securities in possession of the bank without the intervention of the court under _______________?

SARFAESI ACT

Q7. In the term SARFAESI "R" stands for ____________?

Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest

Q8. Demand notice is issued if the amount due is less than 20% of Principal and interest. (true/false)

False

Q9. Where security is not charged to the bank or charge not registered with CERSAI in that case SARFAESI Act is applicable. (true/false)

False

Q10. Foreign exchange management act replacing ________ came into force with effect from__________?

FERA, 1st June 2000