

Bankers right of set off

- It means **combining two or more accounts** which may be in the same branch or in different branches of the same bank
- It is a **statutory right**
- And it can be exercised subject to fulfilment of certain conditions
- A **prior notice regarding the same must be sent to the customer**
- Normally it is exercised in case of insolvency, death or lunacy of the customer, insolvency or dissolution of firm or liquidation of the company, receipt of garnishee order or attachment order
- Accounts must be in the same name and **same capacity**
- **In case of partnership firm:** if there is credit balance in the account of partner the Debt of the partnership firm can be adjusted but if the debt against the partner is due to credit account balance of the firm cannot be utilised
- Where a person has an account in that **capacity of guardian** it is not treated to be in the same right as his own account with the bank
- The debt due must be certain, determined, **due** and should not be future or contingent debt
- **It can also be exercised for the time barred debt**
- Bankers' right of set off can be exercised against the guarantor when the **demand is made on the guarantor** and his liability has been determined.
- The banker has right to exercise right before the garnishee order is made effective for the lawful debt which is due

Right of Appropriation

Defined in Indian Contract Act (Sec 59, 60 and 61)

Expression by Debtor

Where the debtor, owes more than one debts to one person and he makes payment, either with express intimation or under circumstances, implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly by the creditor.

OMISSION BY DEBTOR TO INTIMATE

Where the debtor has not indicated the account and circumstances also do not indicate to which debt, the payment is to be applied, the creditor at his discretion, can apply the payment to any lawful debt, actually due and payable to him from the debtor, whether its recovery is or is not barred by the law of limitation of suits.

NON-APPROPRIATION

Where neither the debtor indicates nor the creditor party appropriates, the payment shall be applied in discharge debts, in order of time, whether they are or are not barred by the law of limitation. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

The general principle is that in case of a debt due with interest, any payment made by the debtor should be first applied by the bank to the interest and thereafter to the principal amount, unless there is agreement to the contrary.

CONDITION PAYMENTS

- Bank is not bound to accept the payment from the borrower on the condition proposed by him.
- But where the condition is accepted, it has to be fulfilled.
- For example: Where the customer deposits money to meet the payment of a particular bill payable by him, bank cannot utilize this money against any other loan/advance account.

PARTICULARS	LIEN	SET-OFF	APPROPRIATION
Legal statue	Indian Contract Act (Sec 170, 171)	Customs and practice amongst Bankers	Indian Contract Act (Sec 59, 60 and 61)
Meaning	Right of creditor to retain possession of goods and securities until the debts has been repaid	Rights of the Bank to club consolidate different a/cs of same borrower to arrive at the net sum due.	Method of crediting amount deposited by the customer to its outstanding loan.
Banker Customer Relationship	Creditor - Debtor	Creditor Debtor & Debtor-Creditor	Creditor - Debtor
Applicable on	Goods & Securities	Amount of claim	Amount of claim
Applied to	A/c in the same order same capacity	A/c in the same order same capacity	Ac in the same order same capacity
Contingent debt	Not applicable	Not Applicable	Not applicable
Quantum of	Amount should be	Amount should be	Amount specific

amount	specific	specific.	Not Applicable
Requirement of legal notice	Required except in case of death, insolvency or receipt of a G.O.	Required except in case of death, insolvency or receipt of a GO.	Not applicable
Limitation	No Limitation. Bank can adjust lawful time barred debt	No Limitation. Bank can adjust lawful time barred debts.	No Limitation Bank can adjust lawful time barred debt
Garnishee Order(GO)	Banker's lien is a general lien is an implied pledge.	Bank should exercise right for a adjusting its own debts before complying with Garnishee.	Bank to exercise this right for adjusting its own debts before complying with Garnishee order.
Death of the customer	Bank has automatic and implied right	Bank has automatic and implied right.	applicable

WHERE RIGHT IS AVAILABLE OR NOT

DEPOSIT IN THE NAME OF	LOAN IN THE NAME OF	RIGHT AVAILABLE OR NOT
Single person	Jointly with others	Available
Partner in firm	Partnership firm	Available
Single name	Same name	Available
Proprietor	Proprietorship firm	Available
Joint-former/survivor	Former	Available
Joint account	One of joint holders	Not available
Partnership firm	One of partners	Not available

Trust	trustee	Not available
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Safe Deposit of Articles & Lockers

Lockers

- **Relationship is lessor and lessee**
- Bank has no responsibility or liability and not held responsible or liable for any loss or damage arising out from any cause
- Where Locker has not been operated for more than three years for **medium risk category** or one year for higher risk category, Bank must immediately contact the customer and advise him either to operate the locker for surrender the locker even though the rent is paid regularly
- Reason for non-operations must be asked in written, if lessee has genuine reasons he or she can be allowed to continue with the locker

Keeping in view the recommendations of the **Committee on Procedures and Performance Audit on Public Services (CPPAPS)** for easy operation of lockers, RBI issued following guidelines for conduct of lockers business

- a) Allotment of Lockers to be delinked from placement of Fixed Deposits
- b) Fixed Deposit may be taken as Security for Locker's rent the existing locker-hirers
- c) Observe Customer due diligence for allotment of lockers

d) For returning articles in Safe deposit lockers / safe custody (With survivor / nominee clause), RBI has advised banks to adopt a similar procedure as followed in handing over the proceeds of deposit accounts deceased person.

	SAFE CUSTODY (INDIAN CONTRACT ACT)	LOCKERS (Transfers of property act)
Relationship	Bank is a Bailee and the Customer is a Bailor.	The Bank is a lessor and the customer is a lessee
Leasing out the space	No space is leased out to the customer	A small locker in the locker cabinet is leased
Nomination	Only one nominee except in of jointly operated a/c where no nomination is allowed.	Only one nominee except In case jointly operated locker (but not more than two)
Duty of the bank	Bank is expected to take proper and extra care regarding safety of the articles.	The bank has to ensure that lockers have been properly locked after operation of the locker.
Delivery of articles	Delivery of the goods on surrender of safe custody receipt	Customer operates the locker at its discretion.
Death of the depositor	Succession Certificate is not valid in respect of Safe Deposit of articles of deceased. Only Probate of the 'Will' or Letter of Administration Is required for delivery of the articles.	Succession Certificate is not valid in respect of Safe Deposit Locker of the deceased. Only Probate of the Will' or Letter of Administration Is required for delivery of the articles.

NOMINATION (Sec. 45 ZA - 45ZF of B.R. Act)

Types of Accounts: (a) Deposit accounts, (b) Safe custody articles (c) Lockers.

Individual Capacity Accounts: Nomination is available in individual a/cs. However, nomination is available to a sole proprietor in all type of deposit a/cs.

Joint Account of Individuals: Nomination is available for joint account of individuals.

Representative A/cs: A firm, club, company, trust, etc., cannot act as nominee.

Minor as Nominee

- Nominee can be a minor. If a minor is the nominee, then a third person must be appointed who will act on behalf of the minor for receiving money if the account holder dies during the minority of the nominee.
- In the guardian operated a/cs of minor, guardian has every right to make the nomination on behalf of minor.
- However, no nomination in self-operated a/c of minor.

Safe Custody

Nomination is available where articles are held in single name (not available for joint Name) on individual accounts.

Safe Deposit Locker

- There could be more than one person (but not more than two), for jointly operated locker accounts.
- Each account holder in joint account can nominate one person.

Nominee is an Agent

In nomination, the nominee is treated as an agent for receiving money i.e., trustee of the legal heirs.

Premature Payment

Premature payment to the nominee before due date is a valid discharge to bank in case of deceased account.

Loan: No Loan to Nominee but premature payment allowed.

Legal Heirs

Payment cannot be made to the legal heirs inspite of production of succession certificate / letter of administration / probate etc. in a/cs in which nomination is made. Payment to the nominee can be reduced only when competent court issues the stay/ prohibitory/ injunction orders.

ELECTRONIC CHEQUES & TRUNCATED CHEQUES

ELECTRONIC CHEQUE

An Electronic Cheque is a cheque in electronic form as against the usual paper instrument in writing - a cheque which contains the exact mirror image of a paper cheque and is generated, written and signed with the use of digital signature (with or without biometrics signature and asymmetric crypto system)

TRUNCATED CHEQUES

Defined in Sec. 6 of the N.I. Act, as a cheque which is truncated during the course of a clearing cycle either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission substituting the further physical movement of the cheque in writing.

GARNISHEE ORDER

The Garnishee Order is issued under **Sec. 60. Order XXI rule 46A-46E of Code of Civil Procedure 1908**. This part of CPC deals with the execution of decrees and orders.

Garnishee order is issued by the court on the application made by the **judgement creditor** in a situation where the **judgement debtor** refuses to pay debt payable to him. The garnishee order is issued on the banker maintaining account of the judgment debtor,

THERE ARE THREE PARTIES:

- a) **Judgement Debtor:** Customer maintaining account with the bank and who refuses to pay the debt payable to the judgement creditor.
- b) **Judgement Creditor:** At whose instance the order is issued.
- c) **Garnishee:** A person / institutions / department who is holding the funds in the name of judgement debtor.

On receipt of the Garnishee Order the judgement debtor deposit account becomes suspended up to the order amount and the banker cannot make any payment thereafter. The credit balance so frozen is called **garnished funds**.

GARNISHEE ORDER IS ISSUED IN TWO PARTS:

- a) Order Nisi
- b) Order Absolute

Order Nisi: It is preliminary order wherein the court directs the banker to stop the payment and seeks the explanation from the garnishee as to why the funds lying in the name of judgement debtor should not be defined for meeting the judgement creditor's claim.

Order Absolute: When on the basis of the report submitted by the bank, the court issues order to the banker attaching the entire credit balance or a portion thereof to discharge the liability towards judgement creditor.

APPLICABILITY:

- a) **On accounts in same order and same capacity**
 - **Order issued in a single name** will not attaches the balance in joint accounts.

- **Order received in the joint account** will be applicable in the individual account but the reverse is not possible,
 - **Order in the individual name will be applicable to the account of sole proprietorship concern** and vice versa as both accounts are in the same order and in the same capacity
 - **Order in the name of partnership firm** is applicable in the individual account of the partners but reverse is not possible, because to settle the liability of partnership firm under the joint and several liability concept, recovery can be made from the individual account
 - **Order is not applicable if the accounts are opened in different capacity** even though signatory in all the accounts is the same Person.
- b) Attaches only **credit balance**.
 - c) Garnishee order is **applicable on debts due** i.e. Demand deposits and accruing due i.e. time deposits.
 - d) Not applicable to **future credits** i.e. proceeds of collection item received subsequently, it is also ineffective when the account is overdrawn.
 - e) **Order is applicable to the credit balance at the time when order is served** to the banker and not on the subsequent credits / amount deposits, after the order is received.
 - f) Garnishee Order is **issued for recovery of actual debts** and not contingent debts
 - g) If garnishee order received before the actual cash payment even though the cheque has been passed for payment and token issued, the banker must stop the payment of the said cheque as the Garnishee Order is applicable.
 - h) Garnishee Order is **not applicable to money held abroad**.

- i) Garnishee order is **not applicable on the items in safe custody or in safe deposit lockers.**
- j) **The trust account cannot be attached** even when a trustee is personally a judgement debtor.
- k) **Securities lodged with the bank for meeting specific liability of the bank** are not attached by the garnishee.
- l) Garnishee order is **applicable on the accounts of the deceased** because it pertains to the previous liability already determined by the court but is **not applicable on the account of the insolvent person.**
- m) Garnishee order is not applicable to **unutilized portion of credit limit or drawing power.**
- n) **Banks right of set-off and appropriation is superior** and as such Bank can exercise the right of set-off and appropriation before meeting any liability under the garnishee orders.
- o) **Order is not applicable on Fixed Deposit held as collateral security**, but if the FDR is held as primary security, garnishee order is applicable on unutilized portion of FDR
- p) **Order is not applicable in Minor account.**

In the event of non-compliance of garnishee order, the court may issue the order to the bank (garnishee) which will be equivalent to the decree passed by the court against the bank.