



# BANK CUSTOMERS ARE ALSO CONSUMERS

The year 2020 saw an overhaul of the erstwhile Consumer Protection Act, 1986 and enforcement of the new legislation - Consumer Protection Act, 2019. Keeping the momentum, the Hon'ble Supreme Court of India, in a recent judgment\*, came down heavily on a bank on the ground that they were deficient in providing the services to its customers and that they need to relook their quality of services considering the rights of consumers.

\*Source: Amitabha Dasgupta vs. United Bank of India and Ors. (decided on 19 February 2021).

In this article, we explore the facts of this case, observations made by the Apex Court vis-à-vis duties of a bank to their consumers, the enhanced risk perception of banks, and how insurance can offer an appropriate risk transfer solution.



## The Case

The judgment came in an appeal against a 2008 judgment of the National Consumer Dispute Redressal Commission. The complainant's mother had taken a locker on rent in United Bank of India ("Bank") in the early 1950s and the complainant was included as a joint holder of the locker sometime in the 1970s. In 1995, the complainant visited the bank to operate the locker and deposit the locker rent, when he was informed that the Bank had broken open his locker in 1994 for non-payment of rent dues for the period of 1993-1994. The bank even admitted to having inadvertently broken the locker and acknowledged that there were no outstanding dues to be paid by the complainant. The recent judgment pertains to the complainant's challenge to the bank's action towards the said locker and the duty a bank owes to the consumer in such cases.



## Observations of The Court

The Supreme Court concurred with the view of the lower authorities and found the Bank liable for wrongfully breaking open the locker, without any just or reasonable cause, and without prior notice. Therefore, the Apex Court ordered the Bank to pay INR 5 lakh as compensation to the complainant and another INR 1 lakh as litigation expenses.

Additionally, the Supreme Court directed the Reserve Bank of India to issue suitable rules or regulations with respect to operation of bank's locker facilities within six months from the date of judgment i.e., by July 2021. The judgment further provides a series of principles to be adhered to by the banks until the issuance of comprehensive guidelines in this regard.

Lastly, the Court emphasized that with the advent of globalization, banking institutions have acquired a very significant role in the life of the common man. Both domestic and international economic transactions within the country have increased manifold. Given that India is steadily moving towards a cashless economy, people are hesitant to keep their liquid assets at home as was the case earlier. In such a situation, the banks cannot wash off their hands and claim that they bear no liability towards their customers. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage investor confidence and harm India's reputation as an emerging economy.



## Liability of Banks Under The Consumer Protection Laws

Over the past two decades, the consumer protection landscape in India has seen a paradigm shift starting with the economy opening in the early 1990s to the advent of online marketplaces and the wide spectrum of new and reformed service offerings. The affordability and propensity to spend, of the average Indian consumer, has increased, which quite necessarily would require an increase in the quality of service, in exchange.

On July 20, 2020, the new consumer legislation - Consumer Protection Act, 2019 - came into force and overhauled the administration and settlement of consumer disputes in India. It brought about a significant responsibility on service providers to ensure consumers are getting efficient services with sufficient measures in place to ensure protection of the consumers' rights.

Banks, as service providers under the earlier Consumer Protection Act, 1986, as well as the newly enacted Consumer Protection Act, 2019, owe a separate duty of care towards their customers, which includes (but is not limited to) due diligence in maintaining and operating their systems. This includes ensuring proper functioning of the systems, guarding against unauthorized access to the system, and providing safeguards against theft and robbery. This duty of care is to be exercised irrespective of the application of laws of bailment or any other legal liability regime. The banks, as custodians of public property, cannot leave the consumers' in the lurch. The relationship between the bank and the customer, is that of a service provider and consumer.





Banks are a repository of customer data and with the increasingly nuanced laws on data privacy and protection, banks also owe a duty of care towards their customers on that front. The bill on data protection and privacy imposes several duties on organisations like banks, with respect to the data they hold and accordingly, the liability of banks towards their customers is likely to continue to increase exponentially.

Not only are the statutory provisions recognizing the growing importance of laying down measures for protection of consumers, but also the judicial precedents on the subject are emphatically recording that the acts of service providers will not be dismissed without strict scrutiny and the orders passed in such cases have been high on monetary fines for the distress caused to the aggrieved consumers.

## Role of Insurance

It is evident that the responsibility of bank as a service provider is significant and given the surge in the number of claims against banks in the recent past, there is no denying the importance of an adequate insurance cover for banks and their employees. The policies available in the market cover losses incurred for theft occurring within the insured's premises, in transit, if there is forgery or alteration, criminal dishonesty, if goods are hypothecated, infidelity or criminal acts by employees, error, omission or negligence in business, among other things. Therefore, when faced with claims, where the payouts in the form of damages are high, having an appropriate insurance cover with sufficient limit of liability would help mitigate balance sheet losses.



## Conclusion

We are witnessing a significant shift in the banking sector from the perspective of liability, risk, and exposure. With an obvious shift in the risk landscape for banks and similar institutions, we do foresee an immediate need for banks to undertake a review of their insurance programs and engage with third party specialists like lawyers, brokers, and other consultants, to map any gaps that may exist and take measures to improve the quality of their insurance. This is not only a key area from a risk management standpoint, but also the need of the hour to protect balance sheets and create & maintain confidence with their stakeholders.

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