

IS CONSUMER COURT REALLY PREFERRED TO BANKING OMBUDSMAN? AN ANALYTICAL STUDY

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The Banking Ombudsman under the Banking Ombudsman Scheme and the Consumer Redressal Authorities under the Consumer Protection Act both redresses the cases on deficiency of banking service. However, there exists a difference both in terms of redressal machinery and the procedure for redressal. This article brings out an analytical study, makes an attempt to give out the reasons why most of the aggrieved bank customers prefer to take shelter under the Consumer Protection Act instead of under their Banking Ombudsmen Scheme, and finally the proposed remedy for it.

THE BANKING OMBUDSMAN SCHEME, 2006

The Ombudsman's task is to provide citizens with a means of redress for maladministration. By performing this role, the Ombudsman helps, first, to relieve the burdens of litigation by promoting friendly settlement and making recommendations to avoid the need for proceedings in courts; and second, to promote the effective implementation of citizen's rights. The Ombudsman is impartial and has a conciliatory approach.

In India, any person whose grievances against a bank are not resolved to his satisfaction by that bank within a period of two months then he can approach the Banking Ombudsman for redressal. This is however subject to the complaint pertaining to any of the matters specified in the Banking Ombudsman Scheme.

Reserve Bank of India (RBI) which assumes the role similar to that of a quasi-legal machinery as it is established by a competent authority to provide for an additional but optional legal remedy for effective, expeditious and inexpensive redressal of customer grievances. Towards effective compliance of this optional legal remedy it introduced the Banking Ombudsmen Scheme in 1995 and got it further amended in 2002 and in 2006. This scheme gained importance because in a court fed litigation the best that solicitors are able to do is to ask the courts to rule on one or more test issues in a single action whereas Banking Ombudsmen appointed by the RBI are frequently asked to contemplate on a large range of issues resulting from a series of wrongs. In any event, whatever the state of the law the courts would apply, the Banking Ombudsman certainly does regard it as important that financial service providers who cause people distress or inconvenience should compensate them and routinely make them do it. In simple words, the Banking Ombudsman is a quasi-judicial authority empowered to summon the bank and its customers to adjudicate on the complaint received against Banks via mediation or conciliation.

In terms of P.Chidambaram - Union Finance Minister of India, the new Banking Ombudsman Scheme, 2006 aims at redressing the public grievances in banking sector. It functions like a court in solving the grievances of bank customers. For this, a special officer named as Banking Ombudsman is deputed by the Reserve Bank of India to redress the grievances of bank customers and every such grievance will be registered by allotting a unique identification number. The measures specified in the Scheme would facilitate the Banks concerned to accept and act upon the grievances.

The Reserve Bank of India notified the revised Banking Ombudsman Scheme, 2006 which came into effect from January 1, 2006. The new scheme widens its scope thereby to include customer

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complaints on certain areas like credit card complaints, deficiencies in providing the promised services even by banks' sales agents, levying service charges without prior notice to the customer and non-adherence to the fair practices code as adopted by the individual banks. It is made applicable to all commercial banks, regional rural banks and scheduled primary cooperative banks whose principal place of business is in India.

The Revised Scheme with well-equipped staff is wholly funded by the Reserve Bank of India. This new scheme allows the complainants to file a complaint in any form, including online and the bank customers are entitled to file an appeal with the Reserve Bank of India. It provides a forum for bank customers for redressal of their common complaints against banks. On the basis of the new Banking Ombudsman Scheme, 2006 the customers are also privileged to complain about non-payment or any inordinate delay in payments or collection of cheques towards bills or remittances by banks, as also non-acceptance of small denomination notes and coins or charging of commission for acceptance of small denomination notes and coins by banks. The Banking Ombudsmen currently have their offices in 15 centres covering the entire country.

Salient Features of the Banking Ombudsmen Scheme, 2006

The Banking Ombudsmen Scheme, 2006 is introduced with an object of enabling the resolution of complaints relating to certain services (as explained above) rendered by banks and to facilitate the satisfaction or settlement of such complaints. The following are some of the salient features of this scheme:

- The RBI appoints officer(s) in the rank of Chief General Manager or General Manager as Banking Ombudsmen for a term of three years at a time to carry out the functions entrusted to them under the Scheme, 2006. It may depute its officers or other staff to the office of Banking Ombudsmen to function as the secretariat of the Banking Ombudsman. It is also the deciding authority for the location of the office of Banking Ombudsman. Presently, RBI appointed fifteen Banking Ombudsmen having most of their offices located in the State Capitals. The Banking Ombudsmen is entitled to hold sittings at various places fall within the purview of his jurisdiction for speedy of complaints received by him.
- The type of complaints against banks acceptable by the Banking Ombudsmen for redressal in concise form are
 1. Refusal or inordinate delay in payment or collection of cheques, drafts, bills, etc.
 2. Refusal without reasonable grounds or charging commission to accept small denomination notes or coins.
 3. Non-adherence to prescribed working hours.
 4. Failure or delay in honoring guarantee or letter of credit commitments or in providing any other specified banking facility.
 5. Levying of charges without adequate prior notice to the customer.
 6. Non-adherence by the bank or its subsidiaries to the instructions of RBI on ATM/Debit card operations or Credit card operations or fair practices code as adopted by the bank.
 7. Closure without due notice or refusal to close bank accounts of the customers.
 8. Violation of directives issued by RBI on any other matters relating to banking or other services.

- A complaint on any of the aforesaid types alleging deficiency in banking service in respect of loans and advances may be filed with the Banking Ombudsman having jurisdiction:
 1. non-observance of Reserve Bank Directives on interest rates;
 2. delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications;
 3. non-acceptance of application for loans without furnishing valid reasons to the applicant; and
 4. non-observance of any other direction or instruction of the RBI as may be specified by the RBI for this purpose from time to time.
- In addition to above, the Banking Ombudsman also deals with any other matter specified by RBI in this behalf from time to time.

Number of complaints received by the Banking Ombudsmen¹

Period	No. of Offices of Banking Ombudsman	No. of complaints received during the year	Average No. of complaints per office
1999-00	15	4994	333
2000-01	15	5803	387
2001-02	15	5907	394
2002-03	15	5399	360
2003-04	15	8246	550

(* Includes only the complaints received during the year and excludes the number of pending complaints).

Awards issued by the Banking Ombudsmen²

Sr. No.	Centre	1999-00	2000-01	2001-02	2002-03	2003-04
1	Ahmedabad	1	4	3	8	2
2	Bangalore	6	3	7	-	8
3	Bhubaneswar	2	1	3	3	3

¹ www.rbi.org

² www.rbi.org

4	Bhopal	3	-	-	-	6
5	Kolkata	14	16	15	13	13
6	Chennai	10	9	-	1	0
7	Chandigarh	0	1	2	-	6
8	Guwahati	2	2	-	14	17
9	Hyderabad	9	2	-	-	6
10	Jaipur	1	3	4	-	5
11	Kanpur	20	8	5	-	5
12	Patna	-	-	-	2	13
13	Mumbai	1	1	2	6	15
14	New Delhi	3	2	3	-	20
15	Thiruvananthapuram	2	-	-	-	2
	Total awards	74	52	44	47	121
	Awards not implemented by banks	34	27	16	20	37
	% of disposal of complaints by issue of awards to total maintainable complaints disposed of	2.98	1.66	1.25	1.07	2.21
	% of disposal of complaints by mediation/ reconciliation/ recommendation/ settlement to total maintainable complaints disposed of	97.02	98.34	98.75	98.93	97.78

Procedural Aspects under Banking Ombudsman Scheme 2006

There exists a procedure for compliance under the scheme 2006 such as

Filing of a complaint

- The Complaint be lodged with the Banking Ombudsman, only after the complainant made a written representation to the bank and the bank either rejected, or not reciprocated to the same within one month from the receipt of such complaint or to the satisfaction of

the complainant. The complaint should be made within one year from the date of cause of action has arisen.

- The Complainant can file his complaint either in prescribed form or simply by writing on a plain paper or through online at www.bankingombudsman.rbi.org.in or by sending an email to the Banking Ombudsman. It is necessary for the complainant to incorporate all the required information in his complaint in case the complaint is not filed in the prescribed form. The complainant or his authorized representative can file the complaint with the Banking Ombudsman with free of cost.
- The Non-Resident Indians in case of any grievances against their bank accounts in India pertaining to their remittances from abroad, deposits and other bank-related matters can file a complaint with the Banking Ombudsman in India for adjudication.
- The Bank appoints Nodal Officers at their Regional/Zonal offices and intimates the same to their concerned Banking Ombudsman. The nodal officer acts as a representative before banking ombudsman in respect of complaints filed against his bank.

Grounds for rejection of a complaint

- The Banking Ombudsman can reject the complaint received by him only when it is
 1. on the same subject matter already adjudicated by the Banking Ombudsman in his previous proceedings; or
 2. pending before any court, tribunal or arbitrator or on any other forum for adjudication; or
 3. frivolous, vexatious, malafide or unreasonable or inappropriateness in nature; or
 4. outside the pecuniary jurisdiction (*discussed later*) of such Banking Ombudsman; or
 5. lodged after the expiry of limitation period prescribed under the Indian Limitation Act, 1963

Confidentiality of Information

- The Banking Ombudsman is required to maintain confidentiality of any information or document that comes to his knowledge or possession in the course of discharging his duties and not entitled to disclose the same without the prior permission of the person furnishing such information or document. However, he can disclose such information or document to the extent reasonable for compliance of any legal requirement or principles of natural justice and fair play in the proceedings.

Settlement to the Complaint

- The Banking Ombudsman initially strives to bring out a settlement to the complaint received by him either through conciliation or mediation between the parties to the complaint. The settlement will be in the nature of an agreement that shall be binding upon the parties to the complaint. If the complaint is not settled by way of an agreement within a period of one month then the Banking Ombudsman provides a reasonable opportunity to the parties to present their case and accordingly passes an award giving suitable reasons. The award can either be accepted in full and final settlement or reject it. The rejection of award by the complainant does not debar him from any other recourse and/or remedies available to him as per the law.

Award

- The Banking Ombudsman Award specifies the amount, if any, payable by the bank to the complainant by way of compensation for the loss suffered by him and also contains any direction(s) given to the bank. The amount awarded may be the actual amount of loss incurred by the complainant due to an act of omission or commission of the bank, or ten lakh rupees, whichever is least. In case of complaints on credit card operations, the award amount also includes the loss of the complainant's time, expenses incurred by the complainant, financial loss, harassment and mental anguish suffered by the complainant.
- A copy of the award shall be sent to the complainant and the bank. It is not binding on the bank until the complainant submits to it, a letter of acceptance of the award in full and final settlement of his claim within 15 days from the date of receipt of copy of the award. An extension may also be granted for a further period of fifteen days for submitting the letter of acceptance. In case the letter of acceptance is not furnished within the prescribed period or non-acceptance of the award by the complainant then the award shall lapse and becomes void.
- The bank shall within one month from the date of receipt of the aforesaid letter of acceptance or within such time not exceeding a period of fifteen days that may be granted by the banking ombudsman comply with the award and intimate the compliance to the Banking Ombudsman.

Appellate Authority

- Any person aggrieved by the award of the Banking Ombudsmen can file an appeal within forty-five days of issue of award before the Appellate Authority (Deputy Governor of the RBI). However, the Banks can make an appeal only with the prior sanction of their Chairman or Managing Director or the Executive Director or the Chief Executive Director or any Person of equal rank.
- The Appellate Authority may dismiss the appeal or allow the appeal or send the matter to Banking Ombudsman for fresh adjudication with specific directions, modify the award with specific directions, or pass any other order on reasonable grounds.
- The order of the appellate authority is final and binding on both the complainant and the bank.

Report

- The Banking Ombudsmen is required to submit a report as on 30th June every year to the Governor of RBI. The report is the replica of the functions carried out by him in the preceding financial year and also the other information asked by RBI for submission. The RBI may publish this report in the public interest either in full or abridged form.

Perusal and Display

- A copy of the scheme shall be kept with the designated officer of the bank for perusal in the office premises. A notice of the availability of the scheme with such designated officer shall be displayed at the appropriate places by the bank for easy [accessibility](#).
- The Banks covered under the Banking Ombudsman Scheme are required to display at the appropriate place to provide adequate information about the Scheme, and name and address of the Banking Ombudsman to whom the aggrieved bank customers are to be approached.

Difficulty in implementing the Scheme

- In case of any difficulty in implementing the Banking Ombudsmen Scheme then RBI may introduce such provisions to remove such difficulty though they are inconsistent with the Banking Regulation Act, 1949 or the aforesaid scheme.

Pending Complaints and Execution of Awards

- The pending complaints and the execution of awards already passed before coming into force of the Banking Ombudsman Scheme, 2006 are governed under the respective provisions of Banking Ombudsman Schemes and the instructions of the RBI issued there under.

Suspension of the Scheme

- The RBI is entitled to suspend this scheme for any such period, as it deems necessary either partially or wholly, and generally or in relation to any specified bank. It can even extend the suspension period from time to time on reasonable grounds.

Is the New Banking Ombudsman Scheme 2006 differs from its previous schemes?

The vision behind the emergence of Banking Institution is to evolve into a strong, sound and globally competitive financial system, providing integrated services to customers from all segments, leveraging on technology and human resources, adopting the best accounting and ethical practices and fulfilling corporate and social responsibilities towards all stakeholders. As a part of this vision, the RBI lodged various Ombudsman schemes till today which forms a part of our discussion.

Yes, the new scheme 2006 differs from its previous schemes. The extent and scope of the scheme, 2006 is much wider than its earlier schemes of 1995 and 2002. Because the new scheme introduces for the first time

- includes complaints relating to credit cards, deficiencies in providing the promised services by banks and its marketing agents, levying of service charges without prior notice to the customers and non-compliance of fair practice codes by the banks;
- facilitates the submission of complaints through online;
- establishes an appellate authority to facilitate appeals against the awards rendered by the Banking Ombudsmen instead of filing with the Review Authority for review of such awards.

Analytical study of Banking Ombudsmen performance

The performance of the Banking Ombudsmen can be analyzed on grounds of the quantum of complaints handled by them, the timeliness in handling the issues and the appropriateness of the decisions of the Banking Ombudsmen.

- The maximum number of complaints dealt with during the period under review pertained to complaints regarding deposit accounts, deficiency in servicing of loans and advances and delay in collection of cheques/bills, etc, besides the miscellaneous complaints. The details are as follows:

Analysis of complaints dealt with - subject-wise³

Particulars	1999-00	2000-01	2001-02	2002-03	2003-04
Deposit Accounts	1687	1617	1662	1789	2500
Loans and Advances	1844	1930	1982	1651	1226
Delay in collection of cheques/bills	943	999	1062	908	1001
Others**	2326	2432	2316	2158	4756
Total	6800* (1806)	6978* (1175)	7022* (1115)	6506* (1107)	9483* (1237)

*No. of complaints includes previous year's pending complaints as indicated in brackets.

- The majority of the complaints pertain to the Nationalized Banks followed by the State Bank Group, constituting around 80% of the complaints received. The RRBs were brought under the purview of the Banking Ombudsman from the year 2002 as per BOS 2002 and the number of complaints against RRBs increased from 33 during the year 2002-2003 to 232 during the year under review. Increasing number of complaints against RRBs also indicate the penetration of the Scheme in rural areas.

Break-up of complaints dealt with - Bank-group-wise⁴

Bank group	1999-00	2000-01	2001-02	2002-03	2003-04
Nationalised Banks	3857	3657	3609	3145	4049
SBI Group	1960	2175	2112	1914	2779
Private Sector Banks	417	531	629	718	1325
Foreign Banks	198	147	254	313	406

³ www.rbi.org

⁴ www.rbi.org

Scheduled Primary Co-op. Banks	131	122	55	112	166
Others	237	346	363	304*	758**
Total	6800	6978	7022	6506	9483

(* Includes 33 complaints against RRBs).

(** Includes 232 complaints against RRBs).

- The Banking Ombudsmen Offices are capable of disposing almost 70% of its maintainable complaints annually. The disposal of 70% complaints by the Banking Ombudsmen is maintained steadily except in the year 2002-2003 where it fall down marginally.
- The Banking Ombudsmen Offices shown good performance in disposal of their complaints either by settlement or by issuing an award. This is evident because during the period 1999-2000 to 2003-04, almost 98% of the total maintainable complaints received are disposed of. 338 awards issued during this period coming to 2% of the total 16261 maintainable complaints disposed of in the same period clearly exhibits that the Banking Ombudsmen strived for disposal of complaints through settlement process. This reflects on the effective decision making capacity of the Banking Ombudsmen considering the relevant and appropriate legal and banking instructions. Moreover, only few cases are filed before the review authority for review of awards or settlement made by the Banking Ombudsmen during the aforesaid period.

Thus, any person whose grievance against a Bank is not resolved to his satisfaction by that Bank can approach the Banking Ombudsman, if his complaint pertains to any of the matters specified in the scheme.

BANK CUSTOMER UNDER THE CONSUMER PROTECTION ACT, 1986

A customer of a bank is a consumer because he enjoys the banking services only on payment of consideration. In terms of section 2(d) of the Consumer Protection Act, 1986 “consumer” means any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. The consideration on availing services need not be only in monetary terms. It can be also out of transactions of transfer of services or, barter or exchange of services. The term ‘services’ includes ‘banking services’ in terms of section 2(1)(o) of the Consumer Protection Act, 1986.

In simple words, a person hiring banking services for consideration is a consumer and to enable him to bring an action against bank, it is necessary for him to avail the banking services for a consideration. Because no complaint can be entertained in any consumer forum on deficiency of service when such services are rendered without consideration. For example, a depositor of a

Fixed Deposit Receipt in a Bank applied for a premature encashment and the same was delayed then he as a consumer is entitled to file a complaint against the bank.⁵

In terms of section 2(1)(g) of the Consumer Protection Act, 1986, 'Deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force, or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Clarifications on Deficiency of Service by Banks

The following are the clarifications provided to decide whether any act amounts to deficiency of service or not:

- **Bank Cheques**

No deficiency of service on the part of the bank where it levies charges for the issue of the cheque book.⁶

Deficiency of service on the part of the bank where it

- a. dishonors the cheque without any justification.⁷
- b. misplaced a cheque received by it like post-dated cheque, cheque deposited for collection, etc. In case if it makes any frivolous demand from the customer then the bank also be held as guilty of Unfair Trade Practice.⁸
- c. is negligent in detecting the forgery committed in the cheque.⁹
- d. refused to pay the amount of the cheque which was deposited earlier for collection on the ground that the cheque is lost in transit.¹⁰
- e. refused to refund the amount of the travelers cheque to its customer on being informed that the same is stolen and claimed refund.¹¹

- **Bank Deposits**

Deficiency of service on the part of the bank where it

- a. renews the deposit receipts without complying with the necessary formalities like the request for renewal of Fixed Deposit Receipt (FDR) in single name was not signed by both the joint owners of the FDR.¹²
- b. fails to release the amount of FDR on its maturity date.¹³

⁵ P.Nagabhushana Rao vs. Union Bank of India, I (1991) C.P.J. 352

⁶ Catholic Syrian Bank vs. Saju Mathew, III (1995) C.P.J. 137

⁷ Sankar vs. B.M., Vijaya Bank, I (1996) C.P.J. 137 (Karnataka, S.C.D.R.C.)

⁸ Vipin Bhardwaj vs. Citi Bank, I (1999) C.P.J. 522 (Delhi S.C.D.R.C.)

⁹ Jain Irrigation Systems Ltd. vs. State Bank of India, 3 (1993) CPJ 1277

¹⁰ Giridhari Lal Koul vs. J & K Bank Ltd., 1 (1995) CPJ 232

¹¹ Central Bank of India vs. Parween Nayak, 2 (1992) CPJ 1029

¹² Satish Mehra vs. Punjab & Sind Bank, II (1996) C.P.J. 457 (Delhi S.C.D.R.C.)

¹³ Punjab national Bank vs. Tej Rajinder Singh, II (1996) C.P.J. 252 (N.C.)

- c. is negligent in not giving credit for the cheque deposited and in dishonoring the cheque drawn by the customer.¹⁴
- d. gave a wrong debit to its customer account by mistake.¹⁵

- **Bank Loans and Advances**

No deficiency of service on the part of the bank where it

- a. refuses to sanction the bank loan on the ground that the applicant is not a consumer.¹⁶
- b. restrains the customer from encashment of the bank guarantee on the ground that the main contract itself been cancelled for want of funds.¹⁷

Deficiency of service on the part of the bank where it

- a. refuses to pay the guaranteed amount on the ground that the complainant as beneficiary of the bank guarantee is a consumer and the bank by issuing the guarantee promised to render service and non-payment of the guaranteed sum amounts to deficiency in service.¹⁸
- b. negligently debited the loan interest in the account though there exists no loan as on that date.¹⁹

- **Bank Employees**

No deficiency of service on the part of the bank where the functioning of the bank stood standstill due to strike of its employees and, there exists no negligence and things are beyond the control of the bank.²⁰

- **Other Services**

Deficiency of service on the part of the bank where it

- a. granted a bank locker and due to its negligence the locker was found open and the ornaments in it are missing.²¹
- b. makes delay in remitting mail transfer and helds liable for mental agony and anxiety caused thereby.²²
- c. failed to credit the sanctioned commuted value of pension in the complainant savings account.
- d. is negligent in complying with the bank technicalities like dispatch of bank draft without signature of the authorized person of the bank.

¹⁴ Anmish B. Pandya vs. State Bank of Saurashtra, Vol. I.(1995) CPJ. 164

¹⁵ J. Bhaumik vs. The Hongkong & Shanghai Banking Corporation Ltd., 2 (1993) CPJ 745

¹⁶ Manager, UCO Bank vs. S.C.Mohanty, I (1996) C.P.J. 259 (Orissa S.C.D.R.C.)

¹⁷ State of Bihar vs. Hindustan Construction, (1997) 99 Comp. Case 528 (Bom.) (DB)

¹⁸ Bank of India vs. HCL Ltd. 2 (1993) CPJ 257 (NC)

¹⁹ Bharat Appliances Corporation vs. Syndicate Bank, 3 (1994) CPJ 389

²⁰ Federal bank, Bistupur, Jamshedpur vs. Shri Bijon Mishra, I (1991) C.P.J. 16

²¹ Punjab National Bank vs. K.B.Shetty, II (1991) C.P.J. 639

²² N.Sahadevan vs. manager, syndicate Bank, II (1991) C.P.J. 505

- e. failed to take due care in detecting the fakeness in the currency notes before they are issued.²³
- f. acted contrary to its customer instructions thereby causing loss to him.²⁴
- g. is not fair enough in refusing the grant to the borrower the promised loan and resorted to take shelter under the Rules which the bank in fact misapplied.²⁵
- h. resorted to make unilaterally changes to the terms and conditions on which the bank locker is hired.²⁶
- i. the conduct is contrary to the bank lockers rules and procedures like it allowed to operate a locker with gold ornaments by a person other than the locker holder and as a consequence the locker found empty.²⁷
- j. refused to disclose the balance in the account of its deceased customer.²⁸

Every act of the banker cannot be decided whether it amounts to deficiency of service or not because some times various complex questions of facts and law are involved at the time of rendering of service.²⁹ Further, 'Service' includes exercise of discretion and failure to discharge the duties to be performed by the officers which is not contractual is negligence.³⁰

Consumer Forum/Commissions

Under Consumer Protection Act, 1986, bank customer on being aggrieved with the service of the bank can resort for redressal with the Consumer Redressal Authorities – District Forum, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission.

- **District Forum**

Each District Forum in every District comprising of district judge and two more persons having ability, integrity and standing having adequate knowledge and experience in varied fields as its members shall have jurisdiction to entertain complaints where the value of services together with the compensation, if any, does not exceed upto rupees five lakhs. It entertains the complaints from the complainants within whose jurisdiction the opposite party actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, or the cause of action wholly or in part arises. Its jurisdiction is original jurisdiction. Any person who aggrieved with the order of the district forum can make an appeal in the prescribed manner within a period of thirty days from the date of the order with the State Consumer Disputes Redressal Commission for redressal. However, the State Consumer Disputes Redressal Commission can accept the appeal beyond the period of thirty days on sufficient reasons being shown within that period.

²³ H.R.Darvesh vs. Punjab National Bank, 1 (1995) CPJ

²⁴ R.Balraj vs. Grindlays Bank, 2 (1993) CPJ 652

²⁵ S.Ravindran vs. Bank of India, 1 (1995) CPJ 214

²⁶ S.L.Bhargava vs. Uco Bank, 2 (1993) CPJ 958

²⁷ R.G.Srivastava vs. Uco Bank, 2 (1994) CPJ 647

²⁸ Indumati Pal vs. Punjab & Sind Bank, 2 (1992) CPJ 651

²⁹ Panalal vs. Bank of India, 2 (1992) CPJ 487 (NC)

³⁰ Baitarani Gramya Bank vs. Jaykrushna Swain, 3 (1993) CPJ 1327

- **State Consumer Disputes Redressal Commission**

Every State Consumer Disputes Redressal Commission in every State comprising of High Court Judge, and two more persons having ability, integrity and standing having adequate knowledge and experience in varied fields as its members shall have jurisdiction to entertain complaints where the value of services together with the compensation, if any, does not exceeds five lakhs but not rupees twenty lakhs. It also entertains appeals on the district forum orders. Its jurisdiction is original and appellate. Any person who is aggrieved with the order of the State Commission can make an appeal within thirty days from the date of such order to the National Consumer Disputes Redressal Commission for redressal. However, the National Commission can accept the appeal beyond the period of thirty days on sufficient reasons being shown within that period.

The State Commission is also empowered to call for records and pass appropriate orders on any consumer dispute which is pending before or has been decided by the District Forum within its State where it appears to it that such forum exercised jurisdiction not entrusted to it by law or has failed to exercise its jurisdiction so vested or, has acted in exercise of its jurisdiction illegally or with material irregularity.

- **National Consumer Disputes Redressal Commission**

The National Consumer Disputes Redressal Commission comprising of judge of the Supreme Court, and four other members having ability, integrity and standing having adequate knowledge and experience in varied fields as its members shall have jurisdiction to entertain complaints where the value of services together with the compensation, if any, does not exceeds twenty lakhs. It also entertains appeals on the order of State Commission. Its jurisdiction is original and appellate. Any person who is aggrieved with the order of the National Commission can make an appeal within thirty days from the date of such order to the Indian Apex Court for redressal. However, the Apex Court can accept the appeal beyond the period of thirty days on sufficient reasons being shown within that period.

The National Commission is also empowered to call for records and pass appropriate orders on any consumer dispute which is pending before or has been decided by the State Commission within its State where it appears to it that such forum exercised jurisdiction not entrusted to it by law or has failed to exercise its jurisdiction so vested or, has acted in exercise of its jurisdiction illegally or with material irregularity.

Limitation Period

No cause of action can be entertained by any of the Consumer Disputes Redressal Authorities unless a complaint is filed within two years from the date of such cause of action. However, the redressal Authorities may accept a complaint whose cause of action exceeds two years, only when sufficient reasons are shown for such delay and the same is recorded by the redressal authorities.

Bank Customer with the Consumer Redressal Authorities

The Consumer, including bank customer, is a person who has obtained goods or services for consideration and being aggrieved by some defect in goods or deficiency in the service can make a complaint to the District Forum or, State or National Commission according to the value of his claim. The object of the Act is to enable the consumer to ventilate his grievances before the

Consumer Forum that is geographically, financially or otherwise within his reach. Towards this objective, the following among other provisions have been made in the Act and the Rules made by the Central Government and the State Government:

- No fee payable
- No second appeal
- Expedious disposal – Ninety days for disposal of the complainant before it from the date of first appearance of the parties
- Limitation – Two years from the date of the cause of action or the grievance
- Condonation of Delay – Thirty days from the date of the receipt of the impugned order
- Enforcement of Order of Consumer Forum – District Forum, State Commission and the National Commission
- MRTTP or Arbitration – No bar to the consumer making a complaint before the consumer forum or the commission, unless such complaint is pending before the MRTTP Commission or the Arbitrator
- Conduct of the case – Complainant can either be appeared by himself or through his representative or lawyer
- Order that may made – Remove the defects or deficiency of service, discontinue the unfair trade practice or restrictive trade practice or desist from doing so and award adequate costs to the parties
- Procedure for filing a complaint – Complaint should be in prescribed form, subject to modifications, if any, required by the District Forum or State or the National Commission.

Thus, the Consumer Protection Act, 1986 also provides a wide coverage for the bank customer to file his grievances with the bank either in the district forum or state commission or national commission basing on the amount of the claim.

BANKING OMBUDSMAN SCHEME, 2006 WITH THE CONSUMER PROTECTION ACT, 1986 - A COMPARATIVE STUDY

The above provisions pertaining to both the Banking Ombudsman Scheme, 2006 and the Consumer Protection Act, 1986 clarified that they both provide redressal for the grievances of the Bank Customers. However, the comparative study of both the aforesaid redressal mechanisms clearly exhibits which is more effective when compared to the other and the reasons behind it.

	Under the Banking Ombudsman Scheme, 2006	Under the Consumer Protection Act, 1986
Bank Customer	The term ‘ Bank Customer’ either under the Scheme, 2006 or under the Banking Regulation Act, 1949 is not defined.	The term ‘Consumer’ under the Act, 1986 includes ‘Bank Customer’. (As discussed earlier).

	A person to be a bank customer should have some sort of an account with the bank, but that the initial transaction in opening an account did not set-up the relation of a banker and customer, and there had to be some measure of continuity and custom. ³¹	
Complainant	Bank Customer or his representative. The Banking Ombudsman also entertains the complaints covered under this scheme received from Central Government or Reserve Bank and forwarded to him for disposal.	Consumer, any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or the Central Government or any State Government or one or more consumers where there are numerous consumers having the same interest. who or which makes a complaint.
Deficiency of Service	The term 'Deficiency of Service' has not been defined either under the Scheme, 2006 or under the Banking Regulation Act, 1949. It is understood from the text of the Scheme, 2006 or under the Banking Regulation Act, 1949 that where a bank provides an inadequate or inefficient service to its customer then it amounts to deficiency in service.	What amounts to 'Deficiency of Service' has been clearly defined under the Act, 1986. (As discussed earlier)
Jurisdiction	Territorial Jurisdiction is the applicable jurisdiction under this scheme, 2006. That means a bank customer on being aggrieved with the banking service can lodge a complaint with the Banking Ombudsman whose office is located in its State.	Territorial as well as Pecuniary Jurisdiction are applicable under this Act, 1986. (as discussed earlier)
Redressal Authorities	Banking Ombudsman (Original) and Deputy Governor of RBI (Appellate Authority)	District Forum (Original), State Commission (Original & Appellate), National Commission (Original & Appellate) and Supreme Court (Appellate). For original jurisdiction, there exists pecuniary limit to file a case
Period of Limitation	Initially, the bank should be given an opportunity to either reject or reciprocate within one month of the written representation lodged with it for deficiency of service. The complaint shall be lodged with the Banking Ombudsman within one year from the date of cause of action (deficiency of service) has arisen, for an award.	The complaint shall be lodged with the Consumer Redressal Authorities within two years from the date of cause of action has arisen unless otherwise stated reasons for condonation of delay, for an order. On being aggrieved with the order, the consumer can file an appeal with the Appellate Authority within thirty days

³¹ Mathews vs. Williams, Brown & Co., 10 T.L.R. (1894) 386

	On being aggrieved with the award of the Banking Ombudsman, within forty-five days of issue of such award, the bank customer can file a complaint with the Appellate Authority – Deputy Governor of RBI, for redressal.	from the date of issue of such an order.
Award / Order – Coverage	Under this Scheme 2006, an award may be issued to the bank customer in terms of compensation for the actual amount of loss suffered by him besides giving necessary directions to the bank for compliance. However, the amount awarded is restricted to ten lac rupees. In case of credit card operations, the award amount further includes the loss of the time, expenses incurred, financial loss, harassment and mental anguish suffered, of the complainant.	Under this Act 1986, an order may be passed favoring bank customer either on removal of defect or deficiency in banking service, pay such amount as compensation for the loss or injury suffered by the customer due to the negligence of the opposite party and provide adequate costs to the parties. 1
Penalties for non-compliance of an order/award	There exists no penalties for non-compliance of award of Banking Ombudsman / Appellate Authority. The Scheme simply provides that the bank shall intimate the compliance of the award to the Banking Ombudsman.	The Bank, on failure, to comply with the order of the Redressal Authorities shall be punishable with imprisonment for a term which shall not be less than one month but may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both. However, this is subject to modification basing on the circumstances of the case.

The Comparative study clearly exhibits that the Consumer Protection Act gained superiority over the Banking Ombudsman Scheme because

- the redressal authorities are located at all levels, i.e., district forum at district level, state commission at state level and national commission at national level. In case of any grievance on the order of the national commission then the complainant can even file in the Supreme Court, the Indian Apex Court, for adjudication.
- the scope of redressal is also wide in terms of original and appellate jurisdiction, i.e., district forum – original jurisdiction, state commission – original and appellate jurisdiction, national commission – original and appellate jurisdiction and supreme court – appellate jurisdiction.
- deficiency of banking service is enough for the bank customer to file a complaint with the consumer redressal authorities.

- complainant need not be the bank customer alone who suffered the deficiency of the banking service. The complainant can be also the authorized representative of the bank customer, bank customers welfare associations, Central and State Governments, etc.
- the order also includes the amount of damages incurred by the complainant.
- non-compliance of the order of the consumer redressal authorities amounts to penalties leviable on the party at fault.

Thus, it is clear that the banking ombudsman scheme to make it easily accessible and remediable for the aggrieved bank customer it should be modified so that the

- availability of banking ombudsman in the office of RBI or at such other office needs good publicity so that the aggrieved bank customer prefers to go to the ombudsman instead of consumer redressal authorities for redressal of their grievances.
- scope of the coverage of the term 'complainant' demands wider scope because consumers normally prefers to fight with their dispute in groups rather than individually for security and, immediate and effective reciprocation.
- award shall also made includable the amount of damages incurred by the complainant due to negligence of the bank in rendering their service. This is in addition to the actual loss incurred because it is also the result of such negligence and the aggrieved party prefers the same to be included in the award.
- the scheme shall also include a provision for penalizing the bank for non-compliance of the banking ombudsman/ appellate authority award. Because it works as a pressure and responsibility on the bank for immediate compliance of such award.

Thus, the banking ombudsman scheme still needs to bring some inclusions and modifications in it for capturing the bank customers trust to approach the banking ombudsman instead of seeking remedy from consumer redressal authorities.

Conclusion

In the system of Banking Ombudsman, results are delivered very soon, the procedures are fair together with cost, and proportionate to the nature of the issues involved. The system deals with cases at reasonable speed, is understandable to those who use it, is responsive to the needs of those who use it, and provides as much certainty as the nature of particular cases allows. This is true because over the past five years nearly 36000 complaints are being resolved by the Banking Ombudsman under this Banking Ombudsman Scheme.

Though the Banking Ombudsman is eligible enough to deliver the bank customer complaints at the earliest yet the Consumer Redressal Forum/Commission is being taken resort of by most of the bank customers for their redressal of grievances with the bank. The reason is they are well popular among the common public which is lacking with the banking ombudsman and its working.

Definitely the Scheme needs popularity in the society for its more appropriateness and effectiveness so that the aggrieved bank customer with the services of the bank prefers to knock

the door of the banking ombudsman for redressal instead of Consumer Redressal Authorities. The scheme should provide more powers and levy more duties on the banking ombudsman so that they can easily be approachable by the aggrieved bank customer.

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