

A SHORT NOTE ON THE COMPARATIVE ANALYSIS OF THE BANKING REGULATION ACT, 1949 AND THE RESERVE BANK OF INDIA ACT, 1934

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INTRODUCTION

The Reserve Bank of India is famously called as 'Bank of Bankers' and it is the organisation that faces political and social pressure during demonetisation and the resignation of Mr. Urjit Patel¹. RBI issues day to day circulars depending on the changing technological issues. RBI stands on the pillar of the RBI Act, 1949 and also the pioneer legislation called the Banking Regulation Act, 1934. The similarities and differences of these two crucial legislations are analysed carefully by the author with close scrutiny. For the convenience of the readers, the author has framed the short note in a tabular column.

¹ See: <https://www.economist.com/finance-and-economics/2018/12/15/urjit-patel-the-head-of-the-reserve-bank-of-india-resigns>.

S.NO.	THE BANKING REGULATION ACT, 1949	THE RESERVE BANK OF INDIA ACT, 1934
1.	The Banking Companies Act, 1949 and later renamed as The Banking Regulation Act, 1949.	Under the authority of the Reserve Bank of India Act, 1934.
2.	w.e.f: 16.03.1949	w.e.f: 1.04.1945
3.	Skeleton: 5 Parts, 56 Sections and IV Schedules.	Skeleton: Chapters, 58 sections and II Schedules.
4.	<p style="text-align: center;"><u>PARTS</u></p> <p>P.I: Preliminary; P.II: Business of Banking Companies; P.III: Suspension of Business and Winding-up of Banking Companies; P.IV: Miscellaneous; P.V: Application to the Co-operative Banks;</p>	<p style="text-align: center;"><u>CHAPTERS</u></p> <p>Ch.I: Preliminary; Ch.II: Incorporation, Capital, Management & Business; Ch.III: Central Banking Functions; Ch. IV: General Provisions; Ch. V: Penalties;</p>
5.	Applicable to the whole of India. (Similar point)	Applicable to the whole of India.
6.	Regulates all banking companies and Co-operative Banks (Since 1965).	Regulates RBI (banker to banks) in securing monetary stability in India. ²
7.	Not applicable to, <ul style="list-style-type: none"> • PACSs; • Land Mortgage banks; • Co-operative Banks (except P-V) 	Ch-IIIB ³ is not applicable to State Bank & Banking company given under section 5 of the Banking Regulation Act, 1949.
8.	S.5(i)(b)- Banking; ⁴ S-5(i)(c)- Banking company; ⁵ S.5(i)(d)- company ⁶	S.2(d)- rupee coin (Indian Coinage Act, 1906); S.2(e)- Scheduled Bank; S.2(h)- Agri.operations, Central Co-op. Banks.. S.2 (i) - Co-op B, PACS...

²Sec. 3 of the Reserve Bank of India Act, 1934.

³ Sec.45H to 45QB of the RBI Act, 1934 says about the provisions relating to non-banking institutions receiving deposits.

⁴*Mahalakshmi Bank v. Registrar of companies, West Bengal.*

⁵*All India New Bank of India Employees Federation v. UOI.*

⁶Section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act ;

		<p>Sec. 45U (b) -money market instruments;</p> <ul style="list-style-type: none">○ include call or notice money, term money, repo, reverse repo, certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity up to one year as the Bank may specify from time to time;○ (c) "repo" means an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed;○ (d) "reverse repo" means an instrument for lending funds by purchasing securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent;
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9.	Permitted banking business –Sec.6(1)(a)- (o); Prohibited banking business- Sec. 8;	<p>➤ Business which Reserve bank may transact- sec. 17(1) – 17 (16);</p> <ul style="list-style-type: none"> ○ Includes acceptance of deposit without interest from Central/State Govt. purchase/sale of forex, securities, rediscounting the bills, grant loans etc. <p>➤ Not to transact- sec.19;</p>
10.	Capital reserve –sec.11	Capital of RBI- 5crores of rupees- sec.4
11.	Non-banking assets –sec.9 <ul style="list-style-type: none"> ➤ Banking company should not hold a property exceeding 7 years; ➤ Property is disposed off using SARFAESI ACT, 2002;⁷ 	
12.	Reserve fund- sec.17 (<u>Not less than 20 % out of the profit-</u> as per RBI circular DBOD.No.BP.BC.24/21.04.018/ 2000-2001 , w. e. f: 31.03.2001, SCBs (including foreign banks) should transfer <u>not less than 25%</u> to the RF)	Reserve fund – sec.45IC (Not less than 20 % out of the net profit)
13.	Cash Reserve Ratio (CRR) - to control the liquidity in the country. SCBs: U\S.18 + 42(1) of RBI Act, 1934; NSCBs: U\S.18 + 56 of Banking Regulation Act, 1949	Sec.42(1) ⁸ - CRR to be maintained ⁹ by the scheduled banks on the last Friday of second preceding fortnight. At present, effective from the fortnight beginning February 09,

⁷ In *Mardiachemicals v. UOI, 2004*, it was held that the amount claim/ deposit clause of 75% in section 17 of SARFAESI Act, 2002 is onerous and ultravires the Constitution of India.

⁸Sec.42 (1), “Every bank included in the Second Schedule shall maintain with the Bank an average daily balance the amount of which shall not be less than three such percent of the total of the demand and time liabilities...twenty per cent of the total of the demand and time liabilities.”

⁹*Public Prosecutor v. AnanthakrishnanIyer*, the term ‘maintain’ means, the reserve ratio should be maintained in accordance with the legislation.

		2013, the <u>CRR</u> is prescribed at <u>4.00</u> per cent of a bank's total of DTL. ¹⁰
14.	<p><u>POWERS TO RBI:</u></p> <ul style="list-style-type: none"> ➤ To control advances and deposits (Sec.21) <ul style="list-style-type: none"> ○ Rate of interest should be consistent with the USURIOUS LOANS ACT, 1918;¹¹ ○ One Time Settlement (OTS) is also included;¹² ○ <u>Payment should be made under OTS:</u> <ul style="list-style-type: none"> ▪ The amount of settlement arrived at in both the above cases, shall preferably be paid in one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement shall be paid upfront and the balance amount of 75% should be recovered in instalments within a period of one year together with 	<p><u>Composition of Central Board (Sec.8)</u></p> <ul style="list-style-type: none"> ➤ A Governor and not more than 4 Deputy Governors; ➤ 4 Directors – one from each of the Local Board; ➤ 10 Directors- CG+ One Govt. official- CG <p><u>Local Boards(Sec.9)</u></p> <ul style="list-style-type: none"> ➤ Situated in the four areas (as given in the 1st schedule); ➤ 5 members appointed by the CG; ➤ Office for a term of 4 years; ➤ Advise the Central Board <p><u>CENTRAL BANKING FUNCTIONS:</u></p> <ul style="list-style-type: none"> ➤ RIGHT TO TRANSACT GOVT BUSINESS (Sec. 21): <ul style="list-style-type: none"> ○ RBI to transact government business in India i.e. remittance,

¹⁰Demand Liabilities

Demand Liabilities of a bank are liabilities which are payable on demand. E.g., current deposits, demand liabilities portion of savings bank deposits, cumulative/recurring deposits, outstanding Telegraphic Transfers (TTs), Mail Transfers (MTs), Demand Drafts (DDs), unclaimed deposits, credit balances in the Cash Credit account and deposits held as security for advances.

Time Liabilities

Time Liabilities of a bank are those which are payable otherwise than on demand. E.g., fixed deposits, cash certificates, cumulative and recurring deposits, time liabilities portion of savings bank deposits, staff security deposits, margin held against letters of credit.

¹¹*Indian Bank, Tiruvannamalai v. Balasubramania Gurukul.*

¹²*Sardar Assocaite v. Punjab & Sind Bank* on 31 July, 2009.

	<p>interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment.</p> <p>➤ <u>Rates of interest not subject to scrutiny (Sec.21A):</u></p> <ul style="list-style-type: none">○ Constitutional validity is given under Entry 45 of Union List of COI;○ This section doesn't override Order XXXIV R-11, CPC; the court may exercise discretion to reduce the interest pendent lite, even if the contracted interest rate is not excessive.¹³ <p>➤ <u>Power to issue licenses (Sec.22):</u>¹⁴</p> <p>License will be granted only if,</p> <ul style="list-style-type: none">○ Capital structure/ earning profits are adequate;○ Granting of license is for public interest; <p>➤ <u>Restrictions on opening & transfer of branches: (Sec.23)</u>¹⁵.</p> <p>➤ <u>Statutory Liquidity Ratio (SLR) (Sec. 24)</u></p> <ul style="list-style-type: none">○ Min.0% to Max. 40%;○ Current SLr IS 19.5% p.a.;	<p>exchange, keeping deposit free of interest etc.</p> <p>➤ Bank notes (Sec.22) -Sole right to issue bank notes.</p> <p>➤ Issue Department (Sec. 23):- Bank notes shall be issued by issue department against the security of gold coins bullion, rupee coins, foreign securities & other approved securities up to ₹ 200 crores.</p> <p>➤ Denominations of notes. (Sec.24):</p> <ul style="list-style-type: none">○ bank notes shall be of thedenominational values of two rupees, five rupees, ten rupees, twenty rupees,fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees,five thousand rupees and ten thousand rupees or○ of such otherdenominational values, not exceeding ten		
	<table><tr><td><u>CRR</u></td><td><u>SLR</u></td></tr></table>	<u>CRR</u>	<u>SLR</u>	
<u>CRR</u>	<u>SLR</u>			

¹³*N.M. Veerappa v. Canara Bank.*¹⁴*Shivabai Patel v. RBI.*¹⁵*SBISA Co-operative Bank v. Tarun Kumar Saha.*

	U/S.18	U/S.24	thousand rupees, as the Central Government may, on the recommendation of the Central Board;
	Only cash reserves	Cash/gold/Govt. approved securities as reserves;	➤ Re-issue of note (Sec.27) - The Bank shall not re-issue bank notes which are torn, defaced or excessively soiled.
	No money is earned out of CRR	Money is earned out of SLR	➤ Rules for Recovery of notes lost, stolen, mutilated or imperfect (Sec.28) - RBI can frame rules for the refunding value of mutilated, soiled or imperfect notes as the matter of grace.
	Maintained by RBI	Maintained by banks themselves	➤ NBFC (Sec.45IA): No NBFC shall commence business or carry on the business of a non-banking company without obtaining a certificate of registration and having the net owned fund of ₹ 25.00 lac or such other amount not exceeding ₹ 200.00 lac, as the RBI may notify.
	To keep a check on liquidity	To have credit expansion	
	➤ <u>Inspection(Sec.35):¹⁶</u> ➤ <u>Power of the Reserve Bank to give directions (Sec.35A)</u> <ul style="list-style-type: none"> ○ Supervisory powers on OTS/ ombudsman schemes/ fraudulent transactions/ Fixed Deposits etc., ➤ <u>Further powers and functions of Reserve Banks (Sec.36)</u> ➤ <u>Power of Reserve Bank to remove managerial and other persons from office (Sec.36AA)</u> ➤ <u>Power of Reserve Bank to appoint additional Directors(Section 36AB)</u> ➤ <u>Power of Central Government:</u>		

¹⁶The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing- (a) prohibit the banking company from receiving fresh deposits; (b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

	<ul style="list-style-type: none"> ○ Sec.35AA, Sec.36AE & Sec.52 <p>➤ <u>Tribunal</u></p> <ul style="list-style-type: none"> ○ <u>Sec.36AH, AI & AJ</u> 	<p>➤ Publication of Bank Rate (Sec.49)- RBI shall make public from time to time the standard rate at which it is prepared to buy re-discount B/E or the other commercial paper eligible for purchase under the Act.</p>
15.	<p><u>Penalties (Sec.46)</u></p> <p>a. Whoever, wilfully makes a statement which is false in any <u>material particular</u>, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with <u>imprisonment for a term which may extend to three years</u> [or with fine, which may extend to one crore rupees or with both].</p> <p>b. If anyone <u>contravenes sub-section (2) of section 35</u>, he shall be punishable with a fine which may extend to [twenty lakh rupees] in respect of each offence, and if he persists in such refusal, to a further fine which may extend to [fifty thousand rupees] for every day during which the offence continues.</p> <p>c. in contravention of an order under <u>clause (a) of sub-section (4) of</u></p>	<p><u>Penalties (Sec.58 B to G)</u></p> <p>➤ Offences by companies (Sec.58 C)</p> <p>➤ Application of section 58B barre (58D)</p> <p>➤ Cognizance of offences (58E)</p> <p>➤ Application of fine (58F)</p> <p>➤ Power of Bank to impose fine (58 G)</p>

	<p><u>section 35</u>, a fine which may extend to twice the amount of the deposits so received.</p> <p>d. <u>If any other provision of this Act is contravened</u> or if any default is made in- punishable with fine which may extend to [one crore rupees] or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more,</p>	
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CONCLUSION

Thus, the structure and characteristic features of the two major legislations are analysed herewith. Both the legislations go hand in hand for the effective functioning of monetary policies and currency flow in the country. As the Lok Sabha Elections are approaching fast, even RBI's schemes and policies are helping out for the ruling party's campaign¹⁷. Needless to say, a monetary organisation should act independently to achieve the goals of the country.

¹⁷ See: <https://www.bloombergquint.com/elections/modi-looks-to-india-s-central-bank-to-spur-economy-before-polls>.