



Na. Vijayashankar

“Ujvala”, 37/5, 20th Main, B.S.K. Stage I, Bangalore 560050

Ph:/Fax:26603490: E-Mail: naavi@vsnl.com

Web: www.naavi.org

Date: 14th February 2013

To

Reserve Bank of India
Head Office
Mumbai

Dear Sirs

With reference to the discussion paper released by RBI for public comments on January 31, 2013, I am submitting my views on the subject for due consideration.

Role of RBI-Regulation Vs Promotion

RBI is the Central Banking Authority in India and is also responsible for the regulation of the Indian Banking system. Inter-alia, RBI is the licensing authority for Banks also. The discussion paper has however been generated with the sole objective of “Promoting” E Banking usage. It has therefore been issued by the Payment and Settlement Department of RBI.

“Regulation” and promotion are diametrically opposing concepts. “Promotion” tries to push adoption of new ideas even if there are uncovered risks in the idea. “Regulation” on the other hand is a conservative concept which tries to ensure that business runs in a specified direction and often puts breaks to the promotional ideas. In fact it has to work as a check on reckless innovation which is a likely possibility of uncontrolled promotion.

Policies of RBI some time may be a mix of “Promotion” and “Regulation”. However in all such cases RBI should err on the safer side of regulation rather than skewing its policies towards promotion.

The discussion paper appears to be more of a “Promotional” objective rather than of a regulatory objective. There are other organizations like Indian

Bank's Association (IBA) which can take up such promotion. It is improper for RBI to reduce itself to the role of a promotional agent. At no point of time RBI should become a tool in the hands of the commercial Banks for profiteering.

The proposed policy of "Disincentivisation" of the use of Cheques by Indian Banks has to be therefore viewed in the context of the responsibilities of RBI for "Regulation" and should not mixed up with the promotional interests of the commercial banks or the technological developments in the globe.

Non Disclosure of who were consulted?

Though the paper is termed as a "Discussion Paper" which is supposed to have been developed in consultation with some stake holders, it appears more than a document drafted by somebody who is only building a case for a preconceived decision to oust cheques rather than a neutral document for discussion.

The paper does not record the stake holders who were consulted.

It is not clear if RBI consulted

- Banking law experts,

- Customers?

- ..in particular the senior citizens, pensioners, physically challenged persons, charity organizations, SMEs, Chambers of commerce? FICCI, CII?

- Cyber Crime experts who are aware of the risks of E Banking which is by default the alternative suggested for cheques?

It can be presumed that RBI might have consulted Commercial Banks, Vendors of Electronic systems who are all people who have a vested interest.

In order to consider the discussion paper credible as a considered policy thought of RBI, it is necessary that RBI the details of the discussion process prior to the release of this discussion paper and release the documentation in this regard.

Public are aware that there are recorded instances in the case of formulation of G.Gopalakrishna Working Group recommendations that some vested interests tried to manipulate the views of the working group with false information. After the matter was brought to the notice of the working group the group made corrective modifications when the recommendations were finally notified.

RBI should ensure that similar vested interests should not be again at work now to get RBI modify its policies to satisfy their commercial advantage.

Ultra-Vires the Statutory Mandate:

“Disincentivisation of the use of cheques” means “use of the statutory powers vested with RBI for the promotion of electronic forms of banking in India”. The discussion paper has clearly indicated that the main objective of the proposed policy is to shift the customer preference from “Cheques” to “NEFT/RTGS” while handling payments in the banking system and also to move from personal withdrawals at the Banking counter to ATMs. NEFT, RTGS and ATM are the E-Channels that RBI is intending the customers to use. This also indirectly promotes the use of “Debit Cards” which inter-alia promotes the sister product of “Credit cards”.

Hence the “Disincentivisation of use of cheques” is directly equivalent to the “Incentivisation of E Channels of Banking”. RBI by adopting this policy will be considered solely responsible for the consequences that follow this shift of Indian Banking to the E Banking environment.

It is well documented that E Banking in India is fraught with higher risks and is “Unsafe”. In publishing the discussion paper, RBI will therefore be considered as pushing the Indian Banking customer towards higher risks in Banking.

Secure E Banking has been in discussion for some time in India and RBI will have to admit that the current situation of E Banking security in India is grave. Not only that there are over Rs 8000 crores of E Banking frauds each year in India, RBI and the Banks are guilty of not informing the public about the actual E Banking losses in the country.

This is a “Fraud” on the Indian Banking public being played by commercial banks under the active assistance of RBI.

The S.R.Mittal Group on Internet Banking and the guidelines which followed in June 2001 required Banks to assume Cyber Fraud risks and obtain insurance to cover their own risks. This was never implemented and RBI remained a silent spectator. This was a serious dereliction of duty on the part of RBI.

G.Gopalakrishna Working Group (GGWG) of RBI in 2011 endorsed the previous Internet Banking guidelines and suggested several Information security measures to be followed by Banks.

Banks have largely ignored these suggestions. RBI has not made any public disclosure of the status of the implementation of GGWG recommendations in Banks though two years have passed since then. The annual reports of Banks in 2012 ought to have indicated the status of implementation in each Banks and I am not aware of any significant disclosures in this regard so far. There are no indications that the March 31, 2013 annual reports are likely show any improvements.

Inability of RBI to enforce GGWG guidelines is a further confirmation of RBI failing in its duty to regulate the Banking of the current era.

Has RBI abdicated its authority to regulate?

The Damodaran Committee on Customer service in Banks made many significant recommendations regarding the use of Internet Banking and ATMs. However RBI has not so far notified the recommendations and the public perception is that RBI is holding back on the recommendations because of the pressure from commercial Banks and IBA. This indicates that RBI has either willingly or otherwise abdicated its duty to call the shots and is allowing commercial banks to guide its policies.

This is the background in which the current discussion paper has been issued.

Status of E Banking Safety:

Before issuing the discussion paper, it was imperative that RBI makes a public disclosure on the status of “E Banking security in India” including security of mobile banking introduced recently by some Banks.

The recent cyber crimes reported in the country have indicated that Banks are conducting illegal banking by ignoring the need to use “Digital Signature” as a replacement of “physical signatures”.

RBI has allowed the illegal banking system to prevail which is a failure of its constitutional duty to ensure prevalence of a legal banking system in India.

OTP system on which RBI has placed faith is not able to prevent occurrence of frauds since it is dependent heavily on the KYC system in the Mobile industry on which RBI has no control. Now RBI is also trying to rely on the Aadhar system which again is yet to pass the legal validity test.

I would like to recall the situation prevalent in the US Banking system where customers are provided an automatic cover against Cyber Frauds. According to Regulation E, the consumer liability on E Banking frauds is limited US \$50/-. In India RBI has not issued any specific guidelines of similar nature and despite an overwhelming legal backing for the customers, Banks drag the customers through prolonged litigation meant to harass them into submission.

Since “Disincentivisation of the use of cheques” is equivalent to “Incentivisation of the use of E Banking” and RBI has failed to ensure the legal functioning of the E Banking nor able to provide insurance to the Bank customers against E Banking frauds either through its own measures such as say an “E Banking Fraud Guarantee scheme” or through the insurance which Banks had to obtain as per the Internet Banking guidelines of 2001, the current move is not keeping with the constitutional responsibility of RBI to ensure that Indian Banking system is safe and legal.

The very concept of “Disincentivising” an age old Banking practice of the use of cheques which are considered as a “Negotiable Instrument” capable of creating a “Holder in Due Course” in business transactions is against the mission of RBI. Additionally if it is promoting “Unsafe Banking”, the concept amounts to colluding with Banks and assisting in their profiteering ambitions against the interests of the common man.

If Banks propose to use technology, RBI must worry about the security risks and how they are addressed before each new technological innovation is

permitted. RBI should take its role as a “Regulator” seriously and should keep itself far from the role of “Promotion”.

At present RBI has done enough for “Technology Enablement” and the rest of promotion is for Banks and IBA to do and not for RBI. Disincentivisation is a direct interference by the regulator and is unethical and illegal.

Technology should be adopted by the community on its own and after the understanding of the risks in full. At present Indian Banking community is not ready to absorb Technology and already Bankers are pushing Debit cards and ATM transactions as default banking means. Internet Banking is offered on the basis of a “Tick” mark in a corner of an application form. There are many customers of Indian Banks who are still using thumb impressions as their signatures since they are illiterate. Such persons cannot understand the implications of “Direct transfer” or “ATM withdrawals” as much as they can understand the “Cheque”.

By trying to avoid the use of cheques, beneficiaries of cheques are denied the statutory right to be “Holders in Due Course” as per the Negotiable Instruments Act, against their wish and by regulatory interference. This amounts to denial of statutory rights by an administrative interference and is illegal.

By trying to move customers from “Signature based physical instruments” to “No digital signature based electronic messages”, the move acts contrary to Information Technology Act 2000/8 as well as RBI’s own banking instructions of the past and hence is illegal and unacceptable.

It does not appear that RBI has made any survey of “Illiterate” and “Semi literate” (those who can sign only and not read or write) customers in the country as well as “Technology illiterate” (Those who can write and read English or other languages but are unaware of cyber crime risks) before releasing the discussion paper.

A similar discussion took place in UK between 2008 and 2011. Initially there was a suggestion that Cheques would be phased out by 2018. However after an uprising of Customers particularly Charities and other cheque dependent community, the proposal was shelved.

Speaking on the subject, the Financial Secretary to the Treasury, Mark Hoban assured the public that

“Cheques would not be scrapped until a suitable alternative is found.....

“It would have been irresponsible for banks to abolish the cheque before a credible and coherent alternative had been developed.”

“Banks must now stop discouraging customers from using cheques. ”

“industry-dominated Payments Council should no longer have the unfettered power to decide the future of cheques, or other payment methods that directly affect millions of people”

These words should have been brought to the attention of the RBI before the discussion paper was released and should have been disclosed in the discussion paper. However the discussion paper is entirely a one sided argument and an attempt to provide a wrong picture of the international view on a similar subject. Even those EU Countries who might have accepted E Banking in replacement of Cheque Banking are those countries which represent much higher internet broad band penetration and literacy as compared to India and their views are of no consequence to the Indian scenario.

Hence the discussion of “Disincentivisation” should be considered unethical and unacceptable ab-initio and has to be dropped.

Multipronged Approach

The discussion paper suggests multipronged approach of disincentivisation involving

- a) Segmenting the users and setting suitable targets
- b) Total stoppage of cheques above a threshold limit
- c) Setting limits or levying charges on issue of cheque books

The discussion paper suggests that

*“positive reinforcements for electronic payments alone will not lead to reduction in cheque reduction, but it has to be reinforced unequivocally through certain measures which will disincentivise the usage of cheques **quite forcefully.**”*

This statement betrays a direct intention of RBI to impose penalties for customers intending to use the Banking system in the manner it is being used at present. We must remember that even good medicine cannot be forced down the throat. E Banking is not necessarily a “Good Medicine”. It could be a “Poison” for many. If RBI tries to force it on customers, it will be committing a grave blunder.

The matter of technology absorption should be left to time and for the banking generation to become IT savvy enough to take on technology on their own free will.

The segment wise suggestion such as individual users should be pushed to NEFT and ECS is misplaced.

Currently the ECS system as well as the direct credit of dividend etc used by Corporates bind the customer to a particular bank account. When he wants to redirect the payment to another bank account or discontinue the ECS instruction, he becomes dependent on the Banks’s efficiency and has to face unwanted problems.

Forced use of P2G payments are also constitutionally questionable.

The suggestion of total stoppage of cheques above a threshold limit lacks conviction. According to the paper itself only 11 % of the cheques in the system today are above Rs 1 lakh and less than 1% of the cheques are above 10 lakhs. Hence there is no significant benefit to be achieved by the move unless the maximum amount upto which cheques can be issued is brought down to around Rs 50,000/-.

Such a low limit will seriously hamper SMEs and force them into an unwanted and risky Internet Banking scenario.

Unlike an individual scenario, controlling the security of Internet Banking access in corporate scenario is more difficult and hence we can expect to see more frauds in SME bank accounts if they are forced to use Internet Banking instead of Cheques for their payments.

RBI should disclose an analysis of Cyber Crimes in the banking segment to inform the public on how many of such frauds pertain to individuals and

how many to SMEs and large companies. Additionally, the breakup on frauds by age group of customers would also reveal how many of the IT aware and IT Non aware customers are victims of Cyber Crimes. Further being “IT Aware” and “Cyber Crime Risk aware” is different.

RBI should commission a study on how many of the customers are aware of “Phishing”, “Man in the middle attack”, “Man in the browser attack”, “Zeus”, “Stabuniq”, “Gozi”, “Gauss”, “SpyEye”, “Dexter”, “Tinba”, “Tilon”, “Shoulder surfing”, “Social engineering”, “Digital Signature”, “SecureWeb”, “trusteerRapport”, etc. If the survey indicates that most of the customers are unaware of the E Banking risks, then it is a reason to drop the decision on the “Dis-incentivisation plan”.

Ultra Vires the Banking Regulation Act

Banking is defined as “Accepting deposits for the purpose of lending and repayable on demand or otherwise by cheques or otherwise”. Hence providing “Cheques” is the basic function of Banks linked to its “Banking” business for which RBI has given license to them.

Any Bank which considers it as a burden is not entitled to the “Banking license” and RBI needs to withdraw such licenses.

Instead if RBI supports such move, it means that even RBI is forgetting its role as a Central Banking agency.

Anti Consumer Approach:

RBI also makes an obnoxious observation on levying charges on the cheque leaves. Already many banks charge upto Rs 3 or more per cheque leaf and Banks also charge on collection of cheques, dishonor of cheques, as well as stop payment of cheques. The charges are usurious.

At the same time Banks donot provide interest on free floating balances. The interest allowed on SB account is a pittance based on the minimum balance while Banks charge usurious charges on loans on a daily balance basis.

Presently SB customers are provided a limited number of cheques and a small interest on balance where as Current account customers forego a large amount of balance without interest. If RBI publishes the total interest value

of current account deposits in Banks even at a nominal rate of say 5% p.a. as against 36% p.a. that banks collect on consumer advances, we will know that Banks are getting a large revenue from such customers which far outweighs the cost of issuing cheque leaves to their customers.

Hence the suggestion of charging for cheque leaves should be either dropped or fixed at atleast 100 per customer. It is shameful for RBI to even take such suggestions as have been made in the discussion paper seriously.

The suggestion on the levying of charges on issuer of the cheque on an advalorem basis is ridiculous. Having already been charged on the issue of cheque books, it is difficult to understand how the RBI thinks it right to collect further charges on each cheque on advalorem basis. The suggestion is that the charges should be on par with the electronic payments.

When E Banking was introduced, RBI and others touted it as a measure to reduce banking costs for the customers. Instead of reducing the costs, E Banking has increased the cost of Banking and today if RBI is considering importing of cost indications from E Banking to traditional Banking, it shows a total bankruptcy of ideas and surrender to the commercial interests of the banks.

Collecting charges from the beneficiary of a cheque is even more funny since he is already levied charges from his Bank as “Collecting Banker’s charges”. If now RBI wants the paying bank also to levy charges then they should substantiate what is the contractual relationship between the beneficiary and the paying bank which provides them the power to levy charges.

Considering the law and practice of banking, such a charge will be illegal.

Over and above all these suggestions the discussion paper in pointing out that there is a need to avoid “slippage to cash transactions”. By such a statement RBI is already building a case for charging higher service charges for ATM transactions.

The overall effect of the suggestions is that the customer is not paid interest for placing money in the Bank, is charged for every aspect of banking including issue of cheque leaves and he will also be charged if he opts to avoid cheques and draw cash through ATMs.

These measures are “Anti Consumer” and may be questioned under the Consumer Protection Act.

Adverse Consequences on the society

The entire exercise as suggested by the author of the discussion paper is only beneficial to those who deal in black money and does not remit any of their earnings into the bank accounts. Traders and SMEs will prefer to sell and buy on cash though this may increase the risks of physical thefts.

Presently a large number of fake currencies is in circulation and there is an opportunity to remove them from circulation if it reaches the Banks.

If the RBI suggestions on disincentivising cheques are introduced, then it will disincentivise holding and operating of banking accounts and the fake currencies will remain longer in circulation.

RBI may conduct a separate study on the impact of any increase in the fake currency circulation in the market and factor it to the decision of disincentivisation of cheques. A study of professionals like Doctors, Legal professionals etc may also be made to estimate what is the impact on the economy of stopping deposits of their daily earnings in cash into the banking system.

Process of Discussion

The discussion paper inviting public comments have been released on the Internet in the RBI website and it is not easily located by a casual visitor to the site. The issue concerns withdrawal of facilities to bankers in the physical space and incentivising e-banking customers. It is therefore imperative that the message should reach non Internet public.

By restricting the publication to the Internet and the feedback mechanism only to e-mails, RBI has cleverly manipulated the feedback system to get response from people who may not be adversely affected by the decision.

RBI should therefore release a press notification on the matter in many languages and through the bank branches distribute the discussion paper freely to all bank customers. They should also get the response through each

bank branch in writing from the customers before taking any further view on the subject.

It is also necessary to provide sufficient time for public to respond.

If RBI tries to consider the web response as a realistic response from the public it will amount to manipulation of public views to the advantage of vested interests. It may be challenged in a Court only on this ground.

Specific suggested Action Points and Comments

(For the sake of avoiding repetition of the contents of the discussion paper the actual recommendation is not mentioned in the following table. Only the serial number and brief particulars are mentioned.)

<u>Discussion Paper Suggested Action Points</u>	Comments
<u>General Comments</u>	
a) Targets for implementation from April 2013	<p>Setting targets dates for transformation of the existing established system which is familiar to an untried, unsafe system on which a majority of the customers are unfamiliar is unwise.</p> <p>Such transformation has to occur naturally over a period of time and the existing system should be allowed to run out. Even if it takes one full generation, it is unavoidable.</p> <p>RBI may well consider introducing a new license of a “Money Shop” and provide the payment and settlement services under E Banking in such “Money Shops”. There will be no question of “Safety” in such an organization since they will not be allowed to use the name “Bank” in their names for promoting their business.</p> <p>The traditional “Banking” should be left to the physical world in the current form with the benefit of the use of the</p>

	<p>word “Bank” in their name.</p> <p>Such a move will segment the traditional bank customers and E Banking enthusiasts into two different types of organizations. Over a period of time both may survive and grow at their own pace.</p>
b) <u>Dispute Resolution</u>	<p>The concern expressed is correct. For the same reason it is necessary to introduce the systems and let people use it as an alternative measure until such time the systems are considered not only functionally better but also secure, economical and convenient.</p> <p>Any acknowledgements issued for e-receipts will be legally valid only if they are digitally signed. RBI should not legitimize any other form of issue of receipts. Such a move will be ultra vires various legislative provisions and will also interfere with statutory audit obligations.</p>
c) Bouncing of electronic payments	<p>Section Sec 25 of Payments and Settlements Act both provide punishments for dishonor of cheque/electronic payment on the basis of paucity of funds.</p> <p>This is no justification for removing cheques from the system.</p> <p>Cheques are Negotiable instruments and have the character different from one to one payment in an electronic payment system.</p> <p>Electronic payment system can be a replacement of handing over of cash from hand to hand but cannot produce the negotiable characteristic of a cheque.</p>
d) Card system to be promoted	<p>The suggestion ignores “Safety”. Card transactions are risky cloning, skimming, impersonation etc are prevalent in the card market on a global scale. Presently widespread irregularities prevail in the credit card industry. Most Banks do not check “Charge slips” before authorizing payments. Many merchants put through fraudulent transactions by raising false charge slips. RBI has failed</p>

	<p>to monitor the credit card operations of Banks.</p> <p>In such a scenario, RBI cannot assume the role of a “promoter” of card business. It will amount to promoting and facilitating frauds.</p> <p>It is possible that in a future legal dispute, the Payment and Settlement Department of RBI may be cited as a respondent for having facilitated the fraud with a reckless promotion of credit card usage and charged with vicarious liabilities.</p> <p>Since the discussion paper is in the nature of “Promotion of Commercial Interests”, RBI cannot defend itself in such legal disputes citing its position as a “Regulator”.</p>
<p>e)Customer Liability</p>	<p>The presence of this statement indicates that there is an attempt to “Put words in the mouth of RBI” by Banks who are known to be pushing for shifting the liability of cyber frauds on the customers.</p> <p>There was a similar attempt during the GGWG deliberations by ICICI Bank and SBI who were part of the GGWG group.</p> <p>The matter of Bank being liable for Cyber Frauds is well established in law and any attempt to indirectly bring it into these discussions will make the author of the discussion paper and the department of Payments and Settlement directly under the radar of “Deliberate attempt to provide an illegal shield to Banks on Cyber Crimes”.</p> <p>To make matters clear, there is and need not be any “Apprehension that in case of any unauthorized transaction, the customer would have to shoulder the loss”. Any such suggestion is mischievous and a giveaway that the discussion paper has a fraudulent intention ab-initio.</p> <p>If RBI persists on this argument and does not remove it from the official document, the matter will be</p>

	<p>aggressively opposed by the community including legal action for trying to mislead the public. This is an attempt to change law through back door and the attention of Supreme Court will be drawn at the earliest to resist any fait accompli.</p> <p>A separate note will be submitted in this matter by the undersigned to the Supreme Court shortly to keep the highest judiciary in the country informed.</p>
Summary	The general basis on which the action points are suggested are themselves untenable and hence the action points that follow as suggestions can only be called baseless.
<u>Individuals as Cheque Users</u>	
a) Free chequebook limitation	“Steep” means that RBI is suggesting banks to be “Usurious”. This is against the collective conscience of bank customers.
b)PDCs for fresh loans	PDCs by definition are not “Cheques”. It is an irony that decades of Banking has gone about with the use of PDCs. It has to be abolished anyway. The loan agreements are sufficient for loan recovery.
c) Existing PDCs to be converted	No comments because PDCs are considered illegal anyway. Anyway the suggestion is a modification of the loan agreement and hence not legally acceptable as fair.
d) Credit card dues	This would be an unfair practice. Against the basic tenets of RBI charter. The emphasis on “High Charges” is anti consumer.
e)value limit on cheques	Not legal and justifiable. It will be discriminatory.
f)Dividend warrants	This will be infringing on the shareholder’s rights to receive dividends and would be considered discriminatory
g)Cash transactions	This is a crazy suggestion. No words to describe charges for cash deposits.. Obnoxious, sadistic, discriminatory, unconstitutional.
h)Cheque deposit boxes	Another Sadistic suggestion. “Inconveniencing” customers cannot be an objective of RBI. God save India

	with such an attitude of the Central Bank
<u>Institutions as Cheque Users</u>	
a)charges for cheques	Usurious suggestions. The free float interest on balances is adequate reward for the Bank. The suggestion is anti-consumer.
b)forcing electronic payments	Interfering with contractual relationship of customers with third parties Unethical, illegal and discriminatory. Expanding the ground for Cyber Fraudsters.
c)Charges on Dividend warrants	Another usurious suggestion. Costs will ultimately shift to shareholders. Double charging for dividend warrants is illegal anti-consumer.
d)Charges on cheque receipts	Rubbing salt on the wound on ordinary people.
e)Convenience charges on e payments	No comments
f)cash deposits	Impractical for many businesses. Will promote parallel cash transfer system in private sector.
<u>Government departments / agencies as Cheque Users</u>	
a)payment to companies through electronic means	This infringes on constitutional rights
b) payment to individuals through electronic means	This infringes on constitutional rights
c)Receipts through electronic	This infringes on constitutional rights

means	
d)Charging government departments	Amounts to robbing citizen's money indirectly
e)convenience fee on electronic transactions	No comments
f)Tax rebates	Discriminatory and contributing to digital divide

Summary

In view of the above, it is considered that the discussion paper is unconstitutional and against the law and spirit underwhich RBI is governed.

RBI should immediately withdraw all efforts on “Disincentivisation” of the use of cheques and like in UK provide an open assurance to the public that no such measures will be attempted in future.

RBI should release a press notification stating that the disincentivisation measure has been withdrawn.

RBI should initiate an enquiry into whether the release of this discussion paper was influenced by Commercial Banks and Plastic Card suppliers who are the financial beneficiaries of the move and take appropriate disciplinary action.

RBI should initiate suitable measures to ensure that such blatantly anti consumer measures meant to terrorize the public are not released without adequate internal checks and the signature of the Governor of RBI.

Yours faithfully



Na.Vijayashankar