

# Menace of Bank Fraud: A Comparative Study between US, UK and India

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**Abstract:** *Fraud has become a substantially viable hazard for the banking system in the current Banking world. To make money fraudulently is not a new concept in the banking system in our country. For a while banks were the forefront of financial crime prevention. Despite that, fraud losses to the bank started to grow progressively in the preceding years. As the banks always deal with a ton of public money, fraudsters are always keen to find loopholes in the banking framework to defraud the bank with the objective of making personal gains.*

*This study focuses on the rising issues of banking fraud in the Indian banking system as well as in different countries. It discusses various aspects and effects of bank fraud in the economy of our country. It evaluates the statistics of recent trends in financial fraud in different countries with the help of secondary data available from reliable sources and also compares the laws regulating bank frauds in the US, UK, and India. And lastly, some recommendations and measures to reduce the future occurrence of fraud in Indian banking framework are placed at the end of this study.*

**Keywords:** *Fraud, Banking Fraud, Economy, Enforcement Authorities*

## I. Introduction

*“The banks are the lifelines of the economy and play a catalytic role in activating and sustaining economic growth, especially, in developing countries and India is no exception.”*

-Shri. SS Mundra (former Deputy Governor of the RBI).

It is well established that the Banks are the essential part of the economy of any country and one can say that they are the backbone of Indian economy. The soundness and stability of a nation's banking and financial system enable it to determine its production and consumption capacity as it helps in the increase and growth of Gross Domestic Product Index (GDP) by the infusion of money in the economy. It helps different segments of the state to boost their production capacities. Its impact on the economy ensures high well-being and living standards of the citizens.

Bank Fraud is a major subject commendable of debate, especially in the present economic condition of our country. Banking Fraud is a risk to the Bank's status in the financial markets and, it can cause bad interactivity with outside stakeholders, like customers, suppliers, financiers, and business partners. As per

the legal dictionary meaning, banking fraud is an unethical or criminal act that takes place when an individual or organization with the intent to defraud uses illegal approach to get hold of cash or assets or other property owned or held by a bank or other financial institution. It also refers to attempts via someone to obtain money from a bank by falsely pretending to be a bank or financial institution.<sup>1</sup> However, it is different from a bank robbery. In bank frauds, the offender desires to keep the crime a secret with the expectation that his fraud shall be unknown to the bank until he has escaped. Likewise, in contrast to ordinary thefts and robberies, the amount misappropriated in bank frauds is in lakhs and crores of rupees.

In the financial year 2017-18 a recent data released by RBI shows that fraudsters looted around Rs 41,167 crore from the banking system, a sharp rise of 72% over the previous fiscal year.<sup>2</sup> This amount has been kept increasing with every passing day. Thus, the occurrence and the amount of cash involved in banking frauds have increased over the years which raise a very serious cause of concern for Reserve Bank of India (RBI) as a banking regulator. Further, not only the banking and financial services establishments but, the government and public authorities, and production industries are also the most threatened sectors to the fraud instances. Therefore, banking frauds can result in massive financial damages to the economy of our country.

## Definitions

The term 'Banking Fraud' or 'Bank Fraud' as its miles utilized reciprocally, has gotten not very many endeavors at its definition, largely because of the rationale that Banking Frauds in and of itself haven't been recognized by any of the market regulators, legislators, or experts of the field as a distinct and imminent problem. This casual perspective towards the issue of Banking Fraud has disadvantaged the problem of Bank Fraud of the due attention of theorists as well.

In the *Black's Law Dictionary*, the meaning the term of 'bank fraud' is adopted from an American Legislation as, “*The criminal offence of knowingly executing or attempting to execute, a scheme or artifice to defraud a financial institution or to obtain property owned by or under the control of a financial institution, by means of false or fraudulent pretenses, representations, or promises (USCA§ 1344).*”<sup>3</sup>

Reserve Bank of India (RBI) as a statutory body has, per se, not outlined the term “fraud” in its guidelines on Frauds. However, a definition of fraud was proposed within the context of electronic banking in the Report of RBI Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds<sup>4</sup>, which reads as: “*A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer*

<sup>1</sup> <https://legaldictionary.net/bank-fraud/>

<sup>2</sup> “Bank frauds rise over 72% to Rs 41,167 crore in 2017-18, says RBI report”, *BusinessToday.In*, (New Delhi December 31, 2018)

<sup>3</sup> Bryan A. Gamer (ed.-in-chief), *Black's Law Dictionary 141*(West Group, Minn., 7\*edn., 1999, 5\* Re. 2002).

<sup>4</sup> *Rbi.org.in. Reserve Bank of India - Speeches*. [online] Available at: [https://rbi.org.in/scripts/BS\\_SpeechesView.aspx?Id=826](https://rbi.org.in/scripts/BS_SpeechesView.aspx?Id=826) [Accessed 5 Apr. 2019].

*system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank”.*<sup>5</sup>

## Growth of Bank Frauds in Indian Banks

In earlier times, the banking frauds were limited to:

- Counterfeit Money Circulation, which got into the banks' financial outline;
- Forged Cheques (cases of duplicity and printing of faux security items like cheques, demand drafts, and pay orders, etc); and
- Advancing credit to concerned parties without checking their repayment capacity and cash-earning capacity within the loan agreement.

With the arrival of the technological era, cybercrime has turned into a new danger in the financial framework of the nation. Now, bankers have to dig with more up to date terms with the progression of time. For example, once prevalent Hawala Transactions of past years is been replaced by Benami Account Transactions under which the account holder has no idea that he/she has a bank account and if that substance is known, the transactions (volume and nature of the same) are wholly unknown to the account holder.

## Issues

As stated earlier, because of diverse technological advancement, banking institutions are becoming more and more susceptible to fraud, as the fraudsters now have vast resources in designing their modus operandi to attain their purpose (to defraud the bank). Poor or average corporate governance policies and weak internal management are one of the key facilitators to fraudulent activity in Public Sector Banks (PSBs). A bank fraud could negatively influence numerous parties to the bank, like shareholders, depositors, borrowers, its staff and, the banking institution itself which ultimately destroys the bank's reputation.

In spite of the fact that the RBI has prompted numerous safeguards and measures to tackle and prevent bank frauds, the no of fraud cases in the Indian banking sector has still been increasing in recent years. As a result amount of money lost in these years has increased which ultimately resulted in the weakening of the economy of our country. It can have an unfavorable impact on the government's aim of assuring ease of doing business in India. In addition, bank frauds can increase Non-Performing Assets (NPAs) mainly in Public Sector banks and it is evident that NPAs decreases the profitability of the bank and can even cause domestic and global slowdown.

Fraud universe in banking institutions is exceptionally broad. It could include employee fraud, customer fraud, institutional fraud, individual fraud, accounting fraud, transactional fraud, etc. Broadly speaking,

<sup>5</sup> Rbi.org.in. Reserve Bank of India - Speeches. [online] Available at: [https://rbi.org.in/scripts/BS\\_SpeechesView.aspx?Id=826](https://rbi.org.in/scripts/BS_SpeechesView.aspx?Id=826) [Accessed 5 Apr. 2019].

fraud in a bank could emerge from either internal fraud or external fraud or both. Internal fraud is also called as occupational fraud or insider abuse. It happens because of the internal activity of an employee stealing cash or cash equivalents from the bank. For example, Accounts fraud (where an employee with certain position holding exclusive access to various accounts or accounts payable, embezzle it or use it as interdepartmental transfers, cash in transit or credit in process). An initial investigation in these incidents can unveil the involvement of not only mid-level employees but also of the senior-most management executives of the bank as was reflected in the case of Nirav Modi-PNB Scam<sup>6</sup>. This raises real concern over the fairness and effectiveness of corporate governance at the highest posts in these banks. On the other hand, External fraud happens when the fraudster uses credit or debit cards to defraud the banking institution or direct theft (in some cases the Automated Teller Machine (ATM) itself).

From the above analysis, it is evident that these frauds are putting a hole in our economy and can erode the public trust in the banking system and can hinder the banking pattern of the public. Moreover, it can also result in depletion of stakeholders and bank capital base, diminished profitability of bank and thus reduces firm value, dismissal and retrenchment of staff and, also sometimes forced closure of the bank.

## II. A Comparative study of bank frauds in different countries

A comparative analysis of the set of laws and stats of different countries can reveal the recent trends in banking fraud and also helps the policy makers to enact laws according to the emerging trends and technological changes which gave an upper hand to the criminals in the concerned matter. It also can very useful for banking institutions to formulate future plans to prevent potential occurrence of frauds.

### India

According to the Indian Contract Act, 1864, “the term ‘Fraud’ means and includes any of the below listed acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- The suggestion as a fact, of that which is not true, by one who does not believe it to be true;
- The active concealment of a fact by one having knowledge or belief of the fact;
- A promise made without any intention of performing it;
- Any other act fitted to deceive;
- Any such act or omission as the law specially declares to be fraudulent.”<sup>7</sup>

In India, the term ‘Bank Fraud’ or ‘fraud’ as such has not been precisely defined in any penal statute. However, the Indian Penal Code, 1860 (IPC) characterizes and imposes harsh punishment for committing

<sup>6</sup> En.wikipedia.org. (2018). Punjab National Bank Scam. [online] Available at: [https://en.wikipedia.org/wiki/Punjab\\_National\\_Bank\\_Scam](https://en.wikipedia.org/wiki/Punjab_National_Bank_Scam) [Accessed 10 Mar. 2019].

<sup>7</sup> Section 17, The Indian Contract Act, 1872



certain acts or omissions which may lead to the commission of fraud. The perpetrators of banking fraud can be prosecuted under some important provisions provided in the IPC such as “Criminal Breach of Trust<sup>8</sup>, Dishonestly Misappropriation of Property<sup>9</sup>, Cheating<sup>10</sup>, Forgery<sup>11</sup>, Counterfeiting of Currency Notes<sup>12</sup>, and Falsification of Accounts<sup>13</sup>”.

### Enforcement Authorities:

The Ministry of Corporate Affairs (MCA) has set up the Serious Fraud Investigation Office (SFIO) in 2003 for identifying and prosecuting or recommending for prosecution white-collar crimes or frauds in India.<sup>14</sup> The SFIO has the power to detect, Investigate and prosecute white-collar crimes and frauds which involve public interest or multi-disciplinary ramifications. The Officers of SFIO have extensive powers in between the investigation such as the power to arrest the accused. The final report of SFIO is treated as a charge sheet for the purpose of Code of Criminal Procedure, 1973 (Cr.Pc). Along with and in addition to SFIO, the Central Bureau of Investigation (CBI) which is a prime investigating agency of India has wide powers regarding investigation and prosecution of cases of Bank Fraud in India. The Anti Corruption Branch, Economic wing and Banking Security & Fraud Cell of CBI are specifically empowered to deal with cases of banking fraud.

The jurisdiction of CBI and other authorities in taking up a Bank fraud case in India can be summed up as follows:

**Table I**

<b>1. <u>Cases to be referred to CBI</u></b>		
<b>(a) Cases of Rs. 1 crore and up to Rs. 5 crore</b>		<b>(b) Cases of Rs. 5 crore and above</b>
- Where staff involvement is prima facie evident	CBI (Anti Corruption branch)	Banking Security & Fraud Cell units of CBI
- Where staff involvement is prima facie not evident	CBI (EOW Branch)	
<b>2. <u>Cases to be referred to local police</u></b>		
Cases below Rs. 1 crore		Local Police

Source: Central Vigilance Commission, Office Order No. 14/3/05 (dated 30<sup>th</sup> March 2005)

<sup>8</sup> Section 405, Indian Penal Code (1860)

<sup>9</sup> Section 403, Indian Penal Code (1860)

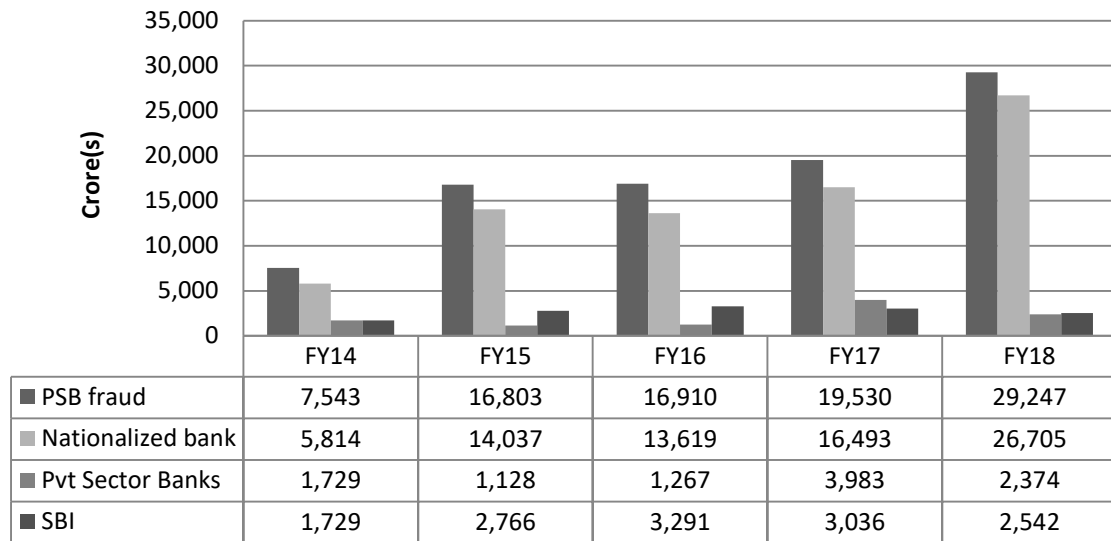
<sup>10</sup> Section 415, Indian Penal Code (1860)

<sup>11</sup> Section 463, Indian Penal Code (1860)

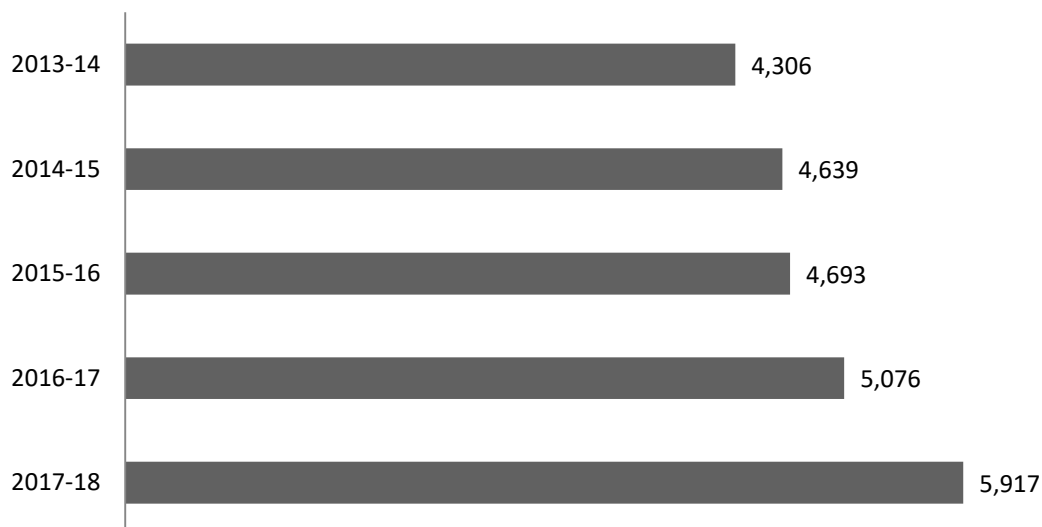
<sup>12</sup> Section 489-A, Indian Penal Code (1860)

<sup>13</sup> Section 477-A, Indian Penal Code (1860)

<sup>14</sup> Mca.gov.in. Ministry Of Corporate Affairs - sfio. [online] Available at: <http://www.mca.gov.in/MinistryV2/sfio.html> [Accessed 12 Mar. 2019].

**Statistical data for bank frauds in India:****Table II****Amount lost due to fraud in Indian banks**

Source: financial stability report (FSR) released by the Reserve Bank of India (RBI) on June 26, 2018.

**No. of Fraud Cases Reported by Banks**

Source: Financial stability report (FSR) released by the Reserve Bank of India (RBI) on June 26, 2018.

**United States of America**

In the United States of America, Bank fraud is considered to be a *white-collar crime*<sup>15</sup>. It is a criminal act under both federal and state law. While the two laws condemn comparable conduct, federal offences are generally viewed to be more serious, as they, for the most part, include conduct that crosses state lines

<sup>15</sup> <https://legaldictionary.net/white-collar-crime/>

which are aggressively prosecuted and come with extreme punishments. State laws relating to bank fraud may vary from state to state depending on how federal law considers bank fraud.

The term 'Bank Fraud' is defined under federal law and made illegal primarily by the bank fraud statute in Title 18 of the U.S. Code. 18 U.S.C. § 1344<sup>16</sup> which states that:

*"Whoever knowingly executes, or attempts to execute, a scheme or artifice—*

*(1) to defraud a financial institution; or*

*(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;*

*Shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both."*

The US government does not take the crime of Bank fraud lightly. It can be said that "To protect federally insured banks from fraud" is the policy behind the U.S. Code. 18 U.S.C. § 1344. The interpretation of the said section gives an exceptionally wide meaning of bank fraud and charges can be imposed for a wide variety of conduct. It covers any "scheme or artifice" expected to "defraud a financial institution," or the use of the misleading approach to acquiring something of significant worth that a financial institution possesses or controls.<sup>17</sup> Here, the expression "financial institution" consists of banks and credit associations that are federally protected by the Federal Deposit Insurance Corporation (FDIC), Reserve banks, mortgage lending businesses, and other specific establishments which acknowledge deposits of cash and other assets. In addition to facing a million dollar fines and imprisonment for 30 years, federal crimes like bank fraud could also include civil forfeiture of the property and assets of the offenders.

According to the US Department of Justice, regardless of whether the offence of fraud occurred outside of U.S territories, the offender can nevertheless be charged in the U.S federal court, as long as the fraudster is in US territories. The fraud subjects the miscreant to grave consequences and therefore penalties; the severity of such offence depends on the monetary worth of the fraud and relies upon that such offence was against a class of individuals who are protected against state or federal crime. Additions to this, there are several Bank Fraud Investigators in the U.S which are generally employed by financial institutions themselves or by domestic law enforcement organizations. Such agencies are authorized to investigate crimes linked to fraud. The United States Secret Service is one such organization and is responsible for keeping the steadiness and integrity of the nation's economic plan. The bank fraud investigator and the Secret Service organizations are authorized to investigate crimes including Counterfeiting, Identity Theft, Check Fraud, Automated Payment Systems Fraud, Direct Deposit Fraud, Check Forgery, etc.

<sup>16</sup> LII / Legal Information Institute. 18 U.S. Code § 1344 - Bank fraud. [online] Available at: <https://www.law.cornell.edu/uscode/text/18/1344> [Accessed 27 Feb. 2019].

<sup>17</sup> Supra. Pt No.7

## Some data related to banking frauds in USA

- According to Forbes report, fraud losses incurred by banks and merchants on all credit, debit, and prepaid general purpose and private label payment cards issued globally hit \$21.84 billion in 2015, with the United States accounting for almost two-fifths (38.7%) of the total at \$8.45 billion.<sup>18</sup>
- Losses due to fraud in the banking industry rose to \$2.2 billion in 2016, up 16 % from 2014, according to the American Bankers Association (ABA) Deposit Account Fraud Survey Report.<sup>19</sup>
- As per the financial news, debit card fraud accounted for 58 % or \$1.3 billion of losses for the industry in 2016, similar to 2014. Attempted fraud against bank deposit accounts reached \$19.1 billion in 2016, up from \$12.9 billion in 2014 – a 48% increase. Banks stopped about \$16.9 billion in fraud attempts in 2016. Additionally, 7% of fraud losses were attributable to online banking and other electronic transactions.<sup>20</sup>
- According to Fair Isaac Corporation (FICO) survey report in 2017, **44 % of US consumers rate identity theft and banking fraud as their top concern.**<sup>21</sup>
- The latest available data from the Justice Department show that during FY 2018 the government reported 483 new convictions for the lead charge of Bank Fraud.<sup>22</sup>

## United Kingdom

The United Kingdom has a standout amongst the most stringent and highly evolved set of laws on Fraud, Money Laundering, and Terrorist Financing in the world. Its eminent authoritarian administration in terms of implementation of such series of laws controls the majority of the regulated sectors including financial institutions, accountants, business entities lawyers, etc., with extensive felony reporting obligations and criminal punishments for any contravention.

There is no definition of the term 'Bank fraud' under the common law. However, the United Kingdom has two main legislations related to fraud i.e. Fraud Act, 2006 and the Theft Act, 1968 and offences of banking fraud can be punished under these legislations. Additional laws for punishment for Frauds exist in particular statutes such as companies and tax legislation.

<sup>18</sup> U.S. Card Fraud Losses Could Exceed \$12B By 2020, *Forbes.com* (2016), <https://www.forbes.com/sites/rogeraitken/2016/10/26/us-card-fraud-losses-could-exceed-12bn-by-2020/#4554c8d4d243> (last visited Mar 20, 2019).

<sup>19</sup> ABA Deposit Account Fraud Survey, *Aba.com* (2017), <https://www.aba.com/products/surveys/pages/2017-deposit-account-fraud.aspx> (last visited Mar 20, 2019).

<sup>20</sup> Banking industry suffered \$2.2 billion in fraud losses in 2016 - *Financial Regulation News*, *Financial Regulation News* (2016), <https://financialregnews.com/banking-industry-suffered-2-2-billion-fraud-losses-2016/> (last visited Mar 20, 2019).

<sup>21</sup> *fico survey us consumers fear bank fraud and id theft more than terrorist attack* | FICO®, *Fico.com* (2017), <https://www.fico.com/en/newsroom/fico-survey-us-consumers-fear-bank-fraud-and-id-theft-more-than-terrorist-attack-07-27-2017> (last visited Mar 20, 2019).

<sup>22</sup> TRAC Detail Reports, *Trac.syr.edu* (2018), [https://trac.syr.edu/cgi-secure/product/login.pl?SERVICE=express9&DEBUG=0&PROGRAM=interp.annualreport.sas&p\\_series=annual&p\\_stat=gui&p\\_trac\\_leadcharge=18%20:00001344&p\\_month=sep&p\\_year=18](https://trac.syr.edu/cgi-secure/product/login.pl?SERVICE=express9&DEBUG=0&PROGRAM=interp.annualreport.sas&p_series=annual&p_stat=gui&p_trac_leadcharge=18%20:00001344&p_month=sep&p_year=18) (last visited Mar 20, 2019).



The Fraud Act contains three main fraud offences namely, Fraud by false representation,<sup>23</sup> Fraud by failing to disclose information where there is a legal duty to disclose it,<sup>24</sup> & Fraud by abuse of position.<sup>25</sup> In addition to this, the Fraud Act contains supplementary offences of the possession, manufacture or supply of articles for use in frauds and obtaining services dishonestly.<sup>26</sup>

Such three main fraud offences under The Fraud Act, 2006 along with the offence of making or providing articles for use in frauds and the common law offence of conspiracy to defraud are all punished with 10 years imprisonment or with fine or both. The offences of obtaining services dishonestly and possessing articles for use in frauds are punishable by imprisonment up to 5 years or with fine or both.<sup>27</sup> Corporate offenders convicted of the financial crime are punished according to the ten-step process set out in the UK Sentencing Council's Definitive Guideline for Fraud, Bribery and Money Laundering Offences, which came into force on 1 October 2014.<sup>28</sup>

The Theft Act includes the offences of false accounting and false statements by company directors<sup>29</sup> related to fraud.

### Enforcement Authorities

The UK's financial service controller, the Financial Conduct Authority (FCA) is authorized to take actions and enforce important rules (including fraud) against firms or individuals for its breach and prosecute the same. Its Financial Crime Guide 2015 specifies certain rules and guidelines to financial institutions to cut back their financial crime risk over a number of areas, including fraud. In addition, the Serious Fraud Office (SFO) is authorized to investigate and prosecute serious or complex fraud cases involving a great amount of money and other cases of fraud are investigated by the police or, in case of tax-related fraud by Her Majesty's Revenue and Customs (HMRC). Cases investigated by the police and HMRC are prosecuted by the Crown Prosecution Service (CPS).

<sup>23</sup> Section 2, The Fraud Act, 2006

<sup>24</sup> Section 3, The Fraud Act, 2006

<sup>25</sup> Section 4, The Fraud Act, 2006

<sup>26</sup> Section 6,7 & 11, The Fraud Act, 2006

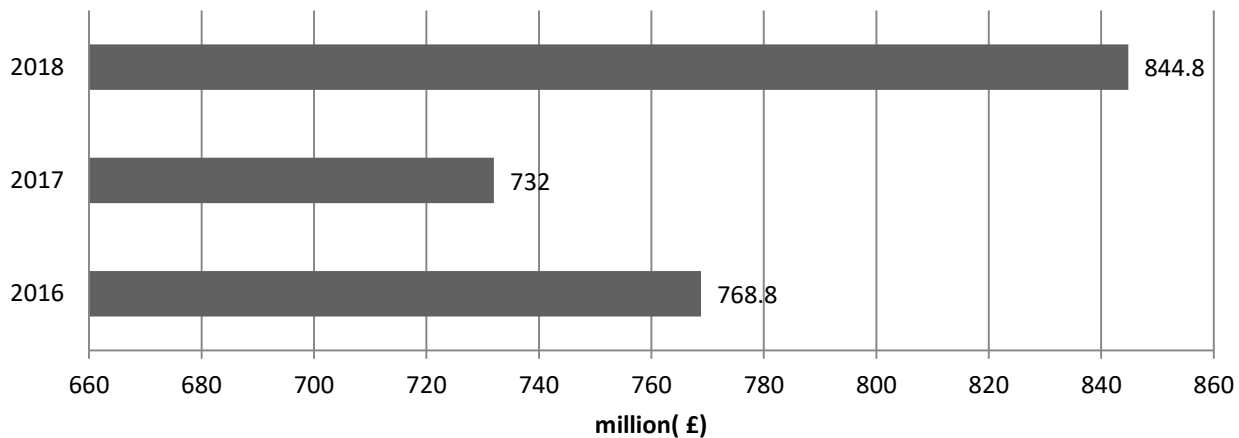
<sup>27</sup> Section 11, The Fraud Act, 2006

<sup>28</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud-Bribery-and-Money-Laundering-offences-definitive-guideline-Web.pdf> (last visited Mar 25, 2019).

<sup>29</sup> Section 17 & Section 19, The Theft Act, 1968

Table IV

### Unauthorised financial fraud losses across payment cards, remote banking and cheques



Source: Data released by UKfinance.org (2018)

### III. Conclusion and Suggestions

To get rich by deceiving the bank is the main intent behind the rising bank frauds. By breaking down the available data on bank frauds, we can say that there have been loopholes at various levels in our banking framework which the fraudsters take advantage of. However, it is not the fault of the banking institution alone; it is also the responsibility of the legislature, enforcement authorities, judiciary, and media to put an end to the increasing numbers of bank frauds in India. To curb this situation, a complete changeover of enforcement schemes is necessary. The government of India recently passed the Fugitive Economic Offender Act, 2018 for strengthening its approach towards the issue. Such type of commendable enforcement actions is also required to grab and punish the offenders of bank fraud within the domestic territories.

As the Banks manages Public's money, it is the inherent obligation of the institution to limit and prevent fraud. It must look after its integrity by conserving the financial resources it holds and in order to do so, banks must be definite to discuss the issue of bank fraud. The employees should be encouraged to take due care and diligence in supervising the transactions of the bank. An efficient internal control should be established which will help to build a healthy and positive environment at the workplace and discourage any temptation of committing misrepresentation amongst the employees. As a preventive measure, ground employees should not be given unlimited access to any delicate items like official stamps, cheques, etc. Moreover, consumer data should be dealt with extreme caution and should be accessed only by experienced and trusted staff of the bank. The management of the bank should not only know their staff thoroughly but also their customers. The KYC norms should be followed strictly and proper documentation should be ensured by the bank. At the branch level, CCTV cameras should be properly installed especially in the cash counter area and monitoring of such should be done all the times by the experienced security personnel. And

most importantly, adherence to the various guidelines given by the RBI to prevent future occurrence of fraud must be strictly followed. Further, the investigation, reporting, and monitoring of bank frauds should be conducted by an independent authority.

Some leading-edge banks of various countries are utilizing artificial intelligence technologies or behavioral biometric systems to fight fraud. Such technologies have the capability to identify fraudsters amongst bank customers by examining their interactions with the banks and in case of online transactions, by their mouse movements and clicks. It is suggested that the use of such advanced technologies should also be employed by Indian banks.

One of the many measures taken by the government may include public awareness programme for affording information to the public on banking fraud along with enforcement actions, related laws, and tips to abstain from turning into a victim. The recent information about the known offenders and their common tricks to get rich scheme can also be provided under such a scheme. The judiciary can also help in preventing fraud in banks by delivering timely justice to the fraud victims and imposing deterrent punishments to the fraudsters according to the law.

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