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E-Banking and Consumer Protection: An Analysis

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Abstract

Banking is now a thriving industry that places a high value on cutting-edge technology advancements. An essential and active role in the development of a country is played by banks. Country's banking system needs to be efficient, effective, and disciplined in order to help the economy grow quickly. The Indian service industry underwent numerous transformations as a result of liberalization. Almost every aspect of human endeavour and life is being transformed by technological advancements². Banks and financial institutions around the world have been transformed by the use of information technology and communication networks. Electronic banking has added a layer of complexity to the banking industry. Rural Indians now have access to banking services, and the corporate wing of those banks has gone global. A banker in India currently operates in a business climate that is in touch with the current global economy. Using the internet, most of our banking needs can be fulfilled wherever we are. Because of all of the new features made possible by digitization, there are also a plethora of new responsibilities for banks to shoulder. Traditional bank branches are being phased out in favour of online and mobile banking. Internet banking has emerged as the biggest focus and targetable area. The customers are able to choose their banker from a number of banks offering a wide range of services and delivering quality service. Commercial banks in India are now becoming more customer-friendly and market-oriented. Internet banking is changing the banking industry and is having a significant impact on the banking relationship. Technology in the form of ATMs, Online banking, Telephone banking, Mobile banking, etc. is driving the banking industry's rapid expansion. As a result of technological advancement, this expansion would not have been conceivable without its backing. In addition, it will have a profound impact on our way of life in the years to come. All types of clients, from the individual account holder to huge corporations, as well as non-customers in some circumstances, can now find the services they need at their local bank. The types and sizes of banks have a significant impact on the services they provide³. This paper also highlights judicial approach towards the protection of the general public or a specific individual who suffers a loss as a result of any violation of

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² Vijayaragavan. T ."Modern Banking Services - A key Tool for Banking Sector " ISSN: 2319-2828 Vol. 3, no. 4, IRACST – (IJCBM), August 2014.

³ Supra Note 1

e-banking services. It also discusses the scope of e-banking, its advantages and disadvantages, and the services supplied by an e-banking system are examined in this study vis- a vis the dangers of E-banking are highlighted, as well as how the judiciary deals with various e-banking frauds.

Keywords: Internet Banking, Frauds, legal issues, online- services.

1.1 Introduction

E-banking is a blanket term used to indicate a process through which a customer is allowed to carry out, personal or commercial banking transactions using electronic and telecommunication network. It is a product offered by banks which facilitates online banking, with the help of which the customer can have access to the bank account in just one click. E-banking covers facilities such as – fund transfer, checking account statements, utility bill payments, opening of bank account, locating nearest ATM, obtain information on financial products and services, applying for loans, etc. using a personal computer, smartphone, laptop or personal digital assistant. In simple words, e-banking refers to a banking arrangement, with which the customer can perform various transactions over the internet, which is end-to-end encrypted, i.e. it is completely safe and secure.

1.2 Evolution of E-Banking

E-banking is still in its infancy in terms of both breadth and idea. UK and US e-banking was established in 1920. Credit cards and computerised payments transfers made it widespread in the 1960s. In Europe and the United States, this concept of banking (internet banking) was first introduced in the 1980s⁴. Banks and financial institutions performed extensive research to develop e-banking as we know it today. As early as 1983, the Nottingham Building Society, sometimes known as the Non-Banking Service, introduced Britain's first internet banking service. In the United States, the first online banking service was launched in 1994⁵.

It is only in the last few years that e-banking has gained popularity in India. In 1990, ICICI Bank, Citibank, and IIDFC Bank launched the country's first internet banking system. Govt. of India and the central bank have adopted a number of measures to aid the growth of e-banking in the country. It has been created by Dr. K.C. Chkrabarty and members from IIM, IDRBT, Banks, and the Reserve Bank of India under the chairmanship of Dr. K.C. Chkrabarty, which presents an illustrative road map for the increased use of IT in the banking sector⁶. E-banking is one of numerous attempts initiated by Indian commercial banks to deal with the increasing pressure from competition. In contrast to the fierce competition among public sector banks, the newly founded private and foreign sector ranks have been providing e-banking services from the outset. Automated Teller Machines (ATMs), electronic Fund Transfer (EFTs), credit cards, debit cards, smart carts, and mobile banking are just a few of the many services and products that Indian banks offer to their consumers⁷.

⁴ Zaman. Syed Masaid. Rana. Qamar Parvez, "Adoption of Internet Banking in Kashmir Valley (Benefits of £-Banking and Customer Satisfaction for £-Banking)" Volume 4, Issue 3, (IJETTCS), available at: www.ijettcs.org

⁵ Supra Note 3

⁶ Supra Note 5

⁷ Ibid

The Jammu and Kashmir Bank is solely responsible for the introduction of electronic banking in Kashmir Valley in 1999. In 1999, Jammu and Kashmir Bank signed an arrangement with IBA to connect its ATMs over a shared network in order to compete with other parts of the country. For its e-commerce initiatives, Jammu & Kashmir Bank partnered with Infosys Technologies in 2000. The Jammu and Kashmir Bank and American Express have teamed up to offer a credit card with a co-branded logo. The J&K Bank-AMEX Co. Branded Credit Card was launched in 2001 by Jammu and Kashmir Bank in accordance with an agreement with American Express bank. One of the most valuable aspects of the J&K Bank American Express Credit Card is the ability to transfer balances internationally, along with other benefits like membership points and emergency cash. In 2003, J&K bank partnered with Master Card International to produce the Global Access Card (an international debit card). An ATM network partnership between Jammu and Kashmir and ICICI Bank. Both corporate and retail users can use the J&K Bank's net banking service⁸. Customers must, however, have a computer or equivalent device linked to the Internet in order to use all of the e-banking services and features⁹.

1.3 Nature and Scope of E-Banking

There are few developments that have had such a quick impact on the financial industry as the e-Banking revolution. Banks all across the world are refocusing their business strategies to take advantage of the new prospects afforded by e-Banking. Clients (both businesses and consumers) can easily compare the services supplied by numerous banks which is a result of market's complete transparency. The seeds of this revolution are sown in the fertile ground of Information and Communication Technology (ICT). Information technology advancements have reduced the cost of processing data, while the Internet has facilitated its transfer, allowing for change in the fundamental basis of banking. Electronic banking services, whether offered online or by other means, have proliferated rapidly over the world in recent years. E-Banking has an impact not just in industrialised economies, but also on countries with weak banking systems¹⁰.

1.1.1 Meaning and Definition of E-Banking

E-banking has been practised in India for some time in the form of digital data stored on computers, credit and debit cards, Automated Teller Machines, Mobile Banking, Net banking, and internet banking¹¹. Internet or e-banking refers to the ability of any user with a computer and a browser to login to their bank's website and conduct any of the virtual banking services.

E-banking is defined in the legal language as banking activities accessed by the use of a computer, modems, and telephones¹².

⁸ <http://www.economictimes.indiatimes.com/jammu-&kashmir-bank-ltd/infocompanyhistorycompanyid-86/1.ems>

⁹ International Journal of Emerging Trends & ichnology in Computer Science Volume 4, Issue 3, (IJETTCS, May-June 2015. (JETTCS, May-June 2015

¹⁰ Kaur. Gangadeep; Jurisprudence of E-Commerce and Consumer Protection in India: Rights of online Consumers In Online Shopping, p/43 (Satyam Law J111ernatio11a/) 2015

¹¹ Sharma, B.R. Bank Frauds Prevention & De:ection, (3rd Ed.) (New Delhi: Universal Law Publishing Co. 2009), p 281

¹² Ranmath, P. Aiyar ;Advanced law lexicon, (Ith Ed.) (Nagpur: Wadhwa and Co; 2013), p.156 1/Ill Section 6 of Banking Regulation

E-banking is defined as a "acceptance of money from the public, for the aim of lending or investing money, which is drawable by check,¹³ draught, or otherwise, and banking utilising electronic means¹⁴."

1.1.2 Features of E-banking

The main features of e-banking are-

- In e-banking, banking functions are carried by using internet facility.
- It removes the traditional geographical barriers as it could reach customers at different counters/jurisdictions.
- E-banking facilitates banking transactions at all time and on the day including holidays and Sundays.
- It provides several additional delivery channels which are more convenient and cost effective to both customer and the banker.
- It is based on science and technology i.e. use of electronic devices which saves time and energy of bankers and customer.
- Its special features lie in ensuring security of the transaction, customer's privacy and transparency of transaction¹⁵

1.1.3 Advantages and Disadvantages

Banks and customers alike have benefited greatly from electronic banking. In the first place, banks that offer electronic banking services benefit from improved customer service and greater market responsiveness. Banks offering these services would be viewed as leaders in the field of technological innovation. Because of this, they'd have a more positive brand image. Other advantages can be quantified based on their monetary value. Increasing profits for shareholders is at the heart of every business, and banks are no exception. Electronic banking services provide a perfect opportunity for profit maximization. Customer advantages include significant time savings and cost savings, as well as increased comfort and convenience when using banking products and services.¹⁶

Although e-banking system provides a numerous advantages to the customers but still prospecting e-banking users should identify its few disadvantages as well. Even after; investing

heavily in e-banking awareness campaign and offering so many benefits through e-banking system, still it lacks in gaining trust factor among its

¹³ Section 6 of Banking Regulation Act, 1949

¹⁴ Supra Note 3

¹⁵ Supra note 12

¹⁶ Bagdadi. Zaidul al . Rizvi. SAM, Rizvi. Halima Sadia. "Do we really need to adopt Electronic Banking?" Vol 3 (2011) IPCSIT © (2011) IACSIT Press, Singapore available at <http://data.conferenceworld.in/ICRISMET/P931-937.pdf>

customers.¹⁷

a. Advantages of E-banking

Many financial institutions are now providing their customers with the option of doing their banking over the internet, which is beneficial to all parties involved. More and more people are embracing the convenience of online banking and the ability to conduct transactions without having to visit a branch. Internet banking has a number of advantages, including but not limited to, the following:

- Customer's account is extremely accessible with an online account. Customer can withdraw at any time through ATMs that are now widely available throughout the country. Besides withdrawing cash customers can also have mini bank statements, balance inquiry at these ATM.¹⁸ Real-time account balances and information are available at the touch of a few buttons thus, making banking faster, easier and more efficient. In addition, updating and maintaining a direct account is easy since it takes only a few minutes to change the mailing address. Order additional checks and be informed for market interest rates.¹⁹ Banks are available 24 hours a day, seven days a week and they are only a mouse click away.
- All services that are usually available from the local bank can be found on a single website. Through Internet banking customer can operate his account while sitting in his office or home. There is no need to go to the bank in person for such matter. E-banking has also greatly helped in payment of utility bill now there is no need to stand in long queues outside banks for his purpose.²⁰
- Payment can be made online for the purchase of goods and services.²¹ The growth of credit card usage also owes greatly to E-banking. Now a customer can shop worldwide without any need of carrying paper money with him.²²

¹⁷E-banking in India – An Overview available at <http://shodhganga.injlibnet.ac.in/bitstream/10603/89802/4/chapter%202.pdf>

¹⁸ <http://shodhganga.injlibnet.ac.in/bitsream/10603171683.7 chapter2.pdf>

¹⁹ Koskosas, Ioannis, "The Pros And Cons Of Internet Banking: A Short Review:" Volume I Issue 1 Business Excellence and Management I December 2011

²⁰ Supra Note 19

²¹ Supra Note 18

²² Supra Note 19

- The rise of E-banking has made banks more competitive. It has also led to expansion of the banking industry, opening of new avenues for banking operations. The growth of E-banking has greatly helped the banks in controlling their Overheads and operating cost. Many repetitive and tedious tasks have now been fully automated resulting in greater efficiency, better time usage and enhanced control.²³
- Customers can avail e-banking facility from anytime, anywhere: therefore there is need to invest more and more on relevant infrastructure.
- Electronic banking has greatly helped the banking industry to reduce paper work, thus helping them to move the paper less environment. The reach and delivery capabilities of computer networks, such as the Internet, are far better than any branch network. ²⁴

E-banking has made it easier for banks to keep track of their clientele. The bank can use this as a useful tool to design commercial packages that meet the needs of its customers. In order to increase the volume of credit creation, e-banking gives banks the opportunity to expand their customer base. which results in better economic condition, besides all this E-banking has also helped in the documentation of the economic activity of the masses.

E-banking has brought so many benefits to both the bank and the general public. E-banking has made it economically feasible to conduct business: Reduced bank operating costs, automated processes, faster credit decisions, and a smaller minimum loan amount are all necessary for profitability.²⁵

b. Disadvantages of E-banking

Traditional money management can be replaced with the convenience of online banking, making it a no-brainer to do so. However, customers may not be aware of the potential risks associated with online banking. Consumers should weigh the benefits and drawbacks of online banking before making a commitment.²⁶ The disadvantages of e-banking system are as follows:

²³ Ibid

²⁴ Ibid

²⁵ Supra Note 18

²⁶ Supra Note 20

- **Impersonal:** Absence of face to face interaction makes it very impersonal. Thus, customers who are more comfortable in dealing with people in physical bank setting that provide those personalised services rather than mechanical interaction; e-banking is not a good option for them.²⁷
- **Transaction Issues:** Sometimes a face-to-face meeting is required to complete complex transactions and address complicated problems. A traditional bank can host meetings and call in experts to solve a specific issue. Moreover, international transactions may be more difficult (or impossible) with some direct banks. If a customer deposits cash on a regular basis, a traditional bank with a drive-through window may be more practical and efficient.²⁸
- **Security Fraud:** People generally hesitate to have an online bank account due to the security risk involved in it. Although, it is not a big issue for banks providing e-banking services, as they prioritize security. To avoid security risk, banks use the most advanced security system in protecting their websites.²⁹
- **Lack of Trust:** Still many customers do not trust online mode of service especially for money related transactions. Users who are not seasoned in e-banking feel very uncomfortable as they have doubt regarding the correctness of the transaction done by them online. As they require some kind of proof of transaction as receipt verify their transactions.
- **Difficult for First Timers:** For the beginners, it appears as a complex mode of service as customer find it complicated to navigate through bank's website. While opening an account online, bank's website requires a number of information and that seems time taking and inconvenient process to the first time users.

Other disadvantages of e-banking are that if server is down the customer can't use the facility of e-banking and he must need computer or smart phone to use the service.

²⁷ Ramesh. S.B. A Study on E-Banking Services In Madurai District, Thesis Submitted To The Madurai Kamaraj University.

²⁸ Supra Note 20

²⁹ Supra Note 28

1.4 Services under E-banking

E-banking has helped banks retain their current customers, increase customer satisfaction, expand their market share, and reduce the costs of providing service to customers. Electronic platforms are becoming increasingly popular for delivering services. A faster and more efficient method of delivering services to customers is provided. Electronic banking allows banks to offer a wide range of services. Use of advanced technology has led to the shift from traditional banking methods to modern banking methods. Online banking, mobile banking, video banking, telephone banking, ATMs, plastic money, and so on are currently the most popular and useful technology-based banking methods. It's difficult to gauge the scope of these services, but we've made an effort by dividing them into the following groups.

1.4.1 Automated Teller Machines (ATM's)

ATMs are electronic machines, which are operated by a customer himself to deposit or to withdraw cash from bank. For using an ATM, a customer has to obtain an ATM card from his bank. The ATM card is a plastic card, which is magnetically coded. It can be easily read by the machine.³⁰ It can be used for anytime, anywhere access to cash withdrawal of cash (available 24x7) and transfer of money from one account to another account. A customer with the help of ATM's can check his/her last transactions and current balance. In addition to these, a mini statement can also be generated with the help of ATM's. Change of personal identification number of ATM/debit card can be made with ATM's etc.³¹

1.4.2 Telephone Banking/Tele Banking/Phone Banking

Financial institutions offer this service to their customers so they can conduct banking transactions over the phone. Banks that only offer telephone banking services are referred to as Phone Banks. Through the use of cutting-edge telephone technology, they make banking more convenient for customers. Using telebanking, customers can access information about their savings, including the amount of current fixed deposits in their account balance, as well as their chequebook and most recent account statement. With the help of phone banking, customers can make transfers of money and request that the bank halt the payment of a

³⁰ Ibid

³¹ Supra Note 18

specific check..³²

1.4.3 Internet Banking

Internet banking or online banking, as it is sometimes called, simply is an extension to traditional banking, which uses internet both as a medium for receiving instructions from the customers and also delivering services to them. Internet banking, as a medium of delivering the banking services to customers and as a strategic tool for the development of banking business, has gained wide acceptability in all developed nations and is quickly spreading in developing nations like India with more and more banks entering the fray. Internet Banking lets clients handle many banking transactions via their personal computer. For instance, one may use his/her computer/laptop/smartphone to view his/her account balance, request transfer between accounts and pay bills electronically.³³

There are transactional and non – transactional applications of online banking services. Transactional applications include bill payments, wire transfers to third parties , fund

transfer between customer's transactional and savings account, Sale and purchase of investments, applications and transactions for loans and enrollment repayments and non-- transactional applications are to analyzing recent transactions, downloading bank statements, viewing paid cheques, financial Institution, administration portfolio management of multiple users at different authority levels and Transaction approval process respectively. ³⁴

1.4.4 Mobile Banking

It is possible to use a mobile phone to access mobile banking, which is a banking service provided via a mobile network and accessible via a mobile device. The short message service allows customers to conduct banking business without the necessity of placing a phone call (SMS). All banking transactions could be completed by pressing a few numbered buttons on the phone's keyboard. Mobile technology is widely accepted and accessible at a reasonable cost. Additionally, it is suited for banking and payment services, and offers a huge opportunity to provide financial services to everyone, regardless of where they live. Customers can access their account

³² Supra Note 1

³³ Supra Note 18

³⁴ Supra Note 1

information, view their bank statements, and perform a variety of other transactions from the privacy of their own homes or workplaces. Mobile banking has a significant advantage over internet banking because it allows for banking at any time and from any location. To make a purchase from their account, customers do not need an internet connection. Customers can access their accounts while waiting for a bus, travelling, at home, or at the office using a mobile phone or tablet. Financial services can be provided and made available via mobile devices, which is known as Mobile Banking.³⁵

1.4.5 Other Services

Information System; General Information like interest rates, branch location, bank products and their features, loan and deposit features are provided in the bank website. There exist facilities for downloading various types of application forms like deposit application form, loan application form, etc. The communication is carried through email; otherwise the person seeking information need not disclose his identity. Also there is no possibility of any unauthorized person getting into production systems of the bank through internet.³⁶

Electronic Information Transfer System- The system provides customer with specific information in the form of account balances, transaction details and statement of accounts. The information is still largely of the 'read only' format. Identification and authentication of the customer is through password. The information is fetched from the banks application system either in batch mode or off-line. The application systems cannot directly access through the internet.³⁷

Fully Electronic Transactional System- This system allows bi-directional capabilities. Transactions can be submitted by the customer for online update. This system requires high degree of security and control. In this environment, web server and application systems are linked to secure infrastructure. It comprises technology covering computerization, networking and security, interbank payment gateway and legal infrastructure.³⁸

³⁵ Supra Note 18

³⁶ Shekar K.C., "Banking Theory and Practice", (20th Ed). (Mumbai; Vikas Publishing House Pvt Ltd, 2007), p.45

³⁷ Ibid

³⁸ <http://www.iajet.org/iajet.files/vol.2/no.I/internet%20banking%20adoption%20in%20an%20emerging%20economy%20indian%perspective.pdf> retrieved on 5 May, 2011

E-banking services can be availed for payment of bill, fund transfer. Credit card, railway and air ticket booking, investment, recharging phones and mobiles and shopping. Generally banks do not charge customers for providing certain services.³⁹

1.5 Risks or issues involved in E-banking

Commercial banking in India has become so intertwined with information technology that it can no longer be considered separate from it. IT advancements have also brought with them a new set of problems to solve. As those who stand to lose out in this scenario slow down and delay the introduction of distribution channels, the evolution of e-banking will not be free of conflict.⁴⁰

Reserve of India defines fraud in the Report of RBI Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds which reads as under:

"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 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." ⁴¹

The different types of frauds involved in the e-banking are:

1.5.1 Skimming

Another way to gain access to a customer's private information is to skim data from their credit or debit cards. It is one of the most common ways to illegally obtain a customer's credit card number. The criminals use skimmer devices, which are electronic devices, to decode the CVV number on the magnetic strip of the ATM card and record it on the fraudster's terminal. The thief now has all the information he needs to commit fraud, including the card numbers and the CVV codes. As far as fraudsters are concerned, this is a goldmine for making counterfeit cards.⁴²

1.5.2 Cyber Squatting

Cyber-squatting is the act of registering a famous domain name and then selling it for a fortune. Cyber Squatters register domain names identical

³⁹ Rao, Joga S. :*Computer Controls and Information Technology Law*,(2nd Ed.), (Wadwa & Co; Nagpur,2005), p.123

⁴⁰ Uppal, R.K., (2009). "Banking Services & Information Technology The Indian Experience". New century Publications: New Delhi.

⁴¹ Talwar, S P. (1999). "IT and the banking sector", Reserve bank of India bulletin. August, 985-992.

⁴² Supra Note 11

to popular service providers" domains so as to attract their users and benefit from it. It is seen with many domain of various banking sectors.

1.5.3 Phishing

Phishing is an e-mail fraud method in which the perpetrator sends out legitimate looking email with an intention to gather personal and financial information from recipients. In this type of fraud, the messages appear to come from well-known and trustworthy web sites. Websites that are popularly and frequently spoofed by phishers include PayPal, EBay, MSN, Yahoo, Best-Buy and other bank websites.⁴³ Customers are directed to a lookalike replica of the original institution's website. They click on the links to enter their information and remain unaware that fraud has occurred. The fraudster then can access the customer's online bank account and to the funds contained in that account.⁴⁴

1.5.4 SMS Spoofing

It is a relatively new technology which uses the short message service (SMS) available on most mobile phones and personal digital assistants, to set who the message appears to come from by replacing the originating mobile number (Sender ID with alphanumeric text). Spoofing has both legitimate uses (setting the company name from which the message is being sent, setting your own mobile number or a product name) and illegitimate uses (such as impersonating another person, company, or product).⁴⁵

1.5.5 Money Laundering Risk

A common type of financial crime is Cyber Money Laundering. An example of this would be stealing the credit card numbers of a number of people and using them fraudulently to make purchases on their behalf, then transferring the money to your own account. Cyber financial fraud has given the word laundering a new meaning, and it denotes 'a process by which money from a criminal enterprise can be easily exchanged without leaving any trace of its origin.' The illegal downloading of funds while they are in transit is referred to as money laundering in this context. Hawala is a unique form of underground banking that is widely regarded as an extremely effective method of money laundering.⁴⁶

⁴³ Supra Note 43

⁴⁴ Supra Note 18

⁴⁵ ibid

⁴⁶ Supra Note 11

1.5.6 International Boundary Risk

Internet banking is totally based on information technology. So it can be operated from any place in any country. Since, it is difficult to check the application for a loan from a customer abroad as compared to familiar customer base. Acceptance of foreign currencies in payment of electronic money may be subject to market risk due to ups and down in forex rates.⁴⁷

1.5.7 Cyber Fraud

Banks are asking their customers to adopt newer service delivery electronic platforms **like** mobile, internet, ATM's for delivering service efficiently and further it helps in cost cutting. While the customers are becoming more tech-savvy and had started using electronic channels, the fraudsters are using newer ways of committing frauds by exploiting **the** loopholes in information technology systems and processes. There have been many **frauds** of low value where the fraudster has used software programs, malware attacks. Phishing, emailing and through SMS etc.⁴⁸

1.5.8 Holes

*Hole is any defect in hardware, software or privacy policy that allows hackers to have unauthorized access to personal computers/ laptops/smart phones. The network tools that **can** be affected by holes are routers, server software, and operating system, firewalls and client.*⁴⁹

1.5.9 ATM Frauds

There are two types of ATM frauds, one is trapping and another is Operational Fake ATMs. Trapping is simple and common fraud. Thieves do not need the credit debit smart card or the data. Thieves fix a device that causes notes to get stuck inside the dispensing machine. There is no way that the card-holder can know about the device from just looking at the machine outside. When the notes get stuck, the customer probably walks away to complain. The thieves keep a watch. When enough number of customers has walked in to withdraw, they come in and 'clean' the ATM. The customer walk away to another ATM without knowing that amount (mentioned for "withdrawal in ATM machine") has been deducted from his/her amount.

⁴⁷ **Frauds** in the Banking Sector: Causes, Concerns and Cures ".16tpd/rbidocs.rbi.org.in/rdocs/Speeches/PDFs/DGK CAF290 71 3.pdf

⁴⁸ Ibid

⁴⁹ Supra Note 1

The Fraudsters install magnetic card readers and a hidden mirror opposite the keypad in an operational fake ATM. Occasionally, a small spy camera is tucked away to record the PIN. Credit and ATM cards can be hacked by these magnetic card reading devices. After trying to withdraw money from a phoney bank, customers are forced to walk away to find another ATM. Data from cards is being recorded by equipment attached to the ATM during this time. The PIN and card details for these cars are now in the hands of the fraudsters.⁵⁰

1.6 Judicial Response

There is great increase in E-banking and M-banking. The virtual banking becomes very popular amongst the customers due to speed, convenience and round-the-clock access. As a result these services are prone to high risk like online fraud, e-forgery and corruption that makes it vulnerable during exchange of services mostly when relying on Information and Technology and also due to the absence of physical bank branches to provide these services to the customers. Some of branches are: speedily expansions of foreign and private banks i.e., increase of number of branches, increase in volume of business, increase inn number of employee's number of customers and spread of operations. These are the contributing factors to the higher incidence of banks frauds and forgeries.⁵¹ The intensive use of Internet for e-Commerce, Cyber marketing and Commercial transactions-related communications have given rise to a number of fraudulent activities for which a person is held criminally liable. The judicial response to such cyber-crimes is discernible from the leading judicial pronouncements handed down by the higher courts from time to time.⁵² Following judicial pronouncements highlight the apt response to growing cyber frauds, forgery, and corruption. These are:

In the Pune Citibank Fraud case,⁵³ four US customers were defrauded to the tune of 3.5 lakhs US dollars which were transferred by the fraudsters to bogus accounts. The defrauded customers complained that all fake accounts were opened in Pune and the money from their account was transferred to

⁵⁰ Ibid

⁵¹ Anthala. Hari Ram." _____ volume 3, Issue 6. (OSR-JEF) May-Jun. 2014), available at www.ios1journals.org

⁵² Supra Note 11

⁵³ The Indian Call Centre Workers of Mphasis's BPO operation, M-source, in Pune misappropriated Citibank customer accounts by acquiring their password's fraudulently (CTLR) 2005 (8) 246-262. www.cyberlawclinf.org/casestudy.asp visited on 27/01/2022.

Pune account. Culprits gained the confidence of these unfortunate victims and obtained their Pin numbers and other account details, which they used to transfer money from victim's account into the accounts of members of the fraud gang. As a result, it was made mandatory that there is need for national ID and a national data base where a name can be referred to. Customer education is very important so that customers do not get taken for a ride. most banks are guilty of not doing this.⁵⁴

The Supreme Court's ruling in the **Morgan Stanley's** case⁵⁵ has been instrumental in augmenting Business Processing Outsourcing (BPO) with a view to create a global safe deposit vault to halt data theft and improve India's prospects on outsourcing destination. The National Association of Software and Services Companies (NASSCOM) announced setting up of an independent watchdog Self-Regulatory Organization (SRO) in April. 2007 for setting out data security standards for the software industry with focus on global practices.

One of the important cases was ICICI Bank Phishing case. E-Mails, that are considered as the most convenient form of communication can bring some shocking surprises. Recently, few ICICI Bank customers in Mumbai, received an e-mail from someone who himself/herself posed as an official of the bank and asked for sensitive information like Internet login name and password of the account holder and directed them to a web page which resembled with the official site page of the bank. The e-mail seemed so genuine that some users even clicked on the URL given in the mail to a web page that resembled the official site. When some customers wrote and asked to find out the purpose of the e-mail, the bank officials were left with no option except to register a complaint with the police. Such a scam is known as 'phishing.' It is actually a banking scam and a warning against which had been issued by many International banks including Citibank.⁵⁶

In ICICI Bank v. Ashish Agrawal, ⁵⁷ the appeal was filed against the order dated 27.07.2009 of the District Consumer Disputes Redressal Forum. Raigarh directing the appellant bank to pay '49,912.36, which was allegedly not withdrawn by him from his account and also '5,000 as compensation for mental agony and '3.000 as litigation cost to the respondent/complainant on account of deficiency in service, regarding maintenance of his bank

⁵⁴ Supra Note 11

⁵⁵ MIS DIT (International Taxation) Mumbai vs. MIS Morgan Stanley & Co. Inc. decided on July 9, 2007. Also see: <<http://indiankanoon.org/doc>> visited on 18 Jan 2022.

⁵⁶ Supra Note 11

⁵⁷ State Consumer Disputes Redressal Commission, Raipur- (Appeal No. 4351/2009)

account. The complaint was filed alleging deficiency of service on the part of the appellant bank as rupees '49,912.36 was withdrawn from his bank account, without his knowledge, using Internet banking. The State Commission vide its order dated 26.03.2010 allowed the appeal. The Commission observed that the respondent was negligent in giving information regarding password to a third person and deficiency of service could not be attributed on the part of the appellant bank, who taken all precaution to give every instruction to the customer and also authorized him to change his password as and when desired.

In the case of Rishi Gupta v. ICICI Bank Ltd.,⁵⁸ the complainant alleges that an amount. 3,00,000 was transferred from his account fraudulently through 15 transactions of 20,000 each. The District Forum vide order dated 21.06 .2010 dismissed the complaint. Hon'ble court in its order observed that in providing confidential details of his banking such as corporate ID, password etc., to a third party in response to an email purported to be issued by the opposite party bank, without verifying with the opposite party bank, the complainant had acted negligently and he cannot put the blame on the bank.

In M/s PACHISIA PLASTICS V. ICCI Bank Ltd.⁵⁹ case the complaint was filed alleging deficiency of service on the part of opposite party (Bank) on the ground that an amount Rs. 1, 18,000 was debited from the account of the complainant through net banking out his authorization. The Forum vide order dated 11.07.009 dismissed the plaint on the ground that there was no deficiency of service on the pan of the bank. In the order dated 11.07.2009, it was observed that the burden lies on the burden that he has kept the code number (password for net banking) secret and that appeared to be a carelessness and negligence on the part of the complainant

In K Thagyarajan v. ICICI Bank⁶⁰ case the complainant alleged that his internet bank account was breached and an amount of '77,000 was unlawfully transferred to another count by some unknown persons. The complainant has alleged deficiency of service on part of the opposite party bank and prayed for refund of the amount with inter and 3,00,000 to be awarded as compensation . The complaint was dismissed wide ordered 20.05.2010 on the ground that there was no deficiency of service on the pan of site party bank as the complainant had himself delivered the password and user id

⁵⁸ Before the Consumer disputes Redressal Forum, Bangalore- (CC No. 514 of 2010).

⁵⁹ Before the Consumer Disputes Redressal Forum, Bangalore- (CC No. 105912008).

⁶⁰ Before the Consumer Disputes Re4ressal Forum, Bangalore- (CC No. 2969 f 2009

(for internet banking banking) to others.

In Smt. Vimla Varkey & Others ⁶¹the complainant was aggrieved that money was fraudulently transferred from her account maintained with opposite party No. 1 Bank to an account maintained with opposite party No.2 Bank (ICICI Bank). The complainant alleged deficiency of service by opposite party No. 2 and had prayed for reimbursement of the amount with interest. It was observed that complainant had, admittedly, herself disclosed her customer ID & PIN to a third in reply to a phishing mail and on the basis of such information the third party might have managed to transfer the amount. The terms and conditions, of opposite party No. 1 Bank, governing operation of Net Banking, stipulated that opposite party cannot be responsible for the loss sustained by the complainant in such transactions. The, therefore, dismissed the complaint vide its order dated 2.09.2008 on the ground there was no deficiency of service on the part of the opposite party bank . Therefore.is need of the time to balance the interests of customers and that of banks and provide protection to banks against any fraudulent or negligent act of customer.

It has been observed that Indian judiciary is taking strong steps against newly emerged e- Banking frauds. These decisions of the Hon'ble Courts provide a sound ground for the growth of stringent provisions in cyber law against online financial frauds.

1.7 Conclusion: Modern banking methods have replaced more traditional ones as a result of the widespread adoption of cutting-edge technology. Online banking, mobile banking, video banking, telephone banking, ATMs, plastic money, and so on are currently the most common and useful technology-based banking methods. Automating labor-intensive and paper-based processes, such as banking, has proven to be a valuable resource for increasing productivity, maintaining operational control, and lowering operating costs. Internet banking has made our lives easier and more convenient, allowing us to access high-quality service at the touch of a button. People's businesses became more efficient and time-saving as a result of these new technologies. However, there are some drawbacks or risks that come with the blessing. There has been an increase in fraud and corruption. In addition, the rapid expansion of foreign and private banks, such as the growth of branches, the volume of business, the number of employees, and the spread of their operations, are some of the reasons for

⁶¹ Before the Consumer Disputes Redressal Forum, Bangalore- (CCNo. 197 of 2008).

this. Bank fraud and forgery is on the rise due to these and other factors. The Reserve Bank of India has also issued directions for the prevention of fraud and forgery in all banks and reporting systems to higher authorities, including the Central Bureau of Investigation (C.B.I.), Central Vigilance Commission (C.V.C.) and State Police, in order to stop these frauds from happening in the country. Judiciary decisions by the Supreme Court of India and other high courts, as well as by the State Consumer Redressal Forum and National Consumer Redressal Commission have all had an impact. The Indian judiciary appears to be taking a strong stance against new e-Banking frauds that have recently emerged. As a result of these decisions by the Hon'ble Courts, strict cyber law provisions against online financial frauds can grow.

