

A CRITICAL ANALYSIS OF LEGAL SHORTCOMINGS IN COMBATING BANKING FRAUD

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ABSTRACT

The barter system, which involved the exchange of products and items without the use of a single means of exchange like money, is where the banking system got its start. Long earlier, there was a barter system in use. The idea of money was introduced later. Determine how trustworthy the person you're trading with is a challenge of bartering. There were no consumer protection laws or warranties involved in the barter system, and the other party lacked any documentation demonstrating the legitimacy of their products. The services and things you are exchanging under the barter system may also be exchanged for subpar or flawed goods. The trade of products and the absence of a single form of money contributed to the Money have shown to be the only form of exchange where one person can give another person their things in exchange for their money. Due to this gap in the barter system, the idea of buying and selling items was first developed. When there was a rise in the buying and selling of goods and services, traders and consumers began to use the banks' credit facilities. When banks first came into existence, the only assistance they offered was loans. Rich merchants who could afford to charge high interest and penalties and impose their terms and conditions were the ones who gave the loans. Due to this factor, there are now more banks and a completely different banking system. When it comes to addressing issues involving money and credit facilities, the banking system has evolved over time to become one of the most reliable systems in the world. The current state of the banking industry dates back to the final decade of the 18th century.

1. INTRODUCTION:

The first bank to be founded in India was the Bank of Hindustan. The State Bank of India is the oldest bank currently in operation. Bank of Calcutta was its first name. The contemporary banking industry is very important to society. When the cash is kept safe in the bank, banks give the depositor a feeling of security. Simply put, it is unwise and unsafe to retain a lot of cash on hand. The account holder can retain cash and currency in banks and deliver it to them as needed in the safest manner because the banks operate as a custodian of the money. The money of account holders is secure with the bank, and the banks also make a commitment to repay the account holders' money in the event of a disaster. No financial transaction is equally feasible without a bank's assistance. Additionally, the cornerstone of India's banking reform was laid by the nationalization of 14 significant banks. At the time, there was no such thing as the internet,

and all banking transactions had to be carried out in front of bank employees. The only way to get credit from banks is by dealing directly with bank employees by going to the bank in person. We are unable to understand the difficulties that the bank account holders of the past must have faced.

The amount of money that account holders deposit is essential to the way that banks operate today. Account holders deposit money in banks to earn interest, and the banks then lend money to that in need. The identical funds that account holders are depositing are used to fund the loan. The banks move money around the economy in this way. Scheduled Banks and Non-Scheduled Banks are the two groups into which banks in India are divided. LPG—Liberalization, Privatization, and Globalization—played a significant part in expanding the roles of today's banks. LPG enabled the development of the internet and the idea of online banking. Economic and financial sector changes were undertaken to keep up with the liberalization process, which resulted in the development of an effective and efficient banking system in India.

Information technology was introduced to the banking industry as a result of a landmark report from the Dr. Rangrajan Committee in the year 1984. Also, the second Rangarajan Committee, Saraf Committee, Vasudevan Committee, and the Shere Committee make progress and development easier for introducing computerization into the banking sector. This resulted in the recommendation of Information technology to branches of all the banks. Ultimately Information Technology was administered in the banking system of India. According to the survey 2017 conducted by newspaper Economic times¹, 26% of the transactions are done online. There are various examples such as Automatic Teller machines (ATM), Electronic Fund Transfer (EFT), E-cheques, Electronic Data Interchange (EDI), Demat Accounts; various cards such as Debit cards, Credit cards, etc. are some of the methods of banking through which Information Technology is administered. There is no boundary for transactions in any part of the world. Information Technology makes it easy to sit in one corner of the world and make payment to another corner without any hindrances. Information Technology turns all into one and enables paperless transactions. The basic purposes of using online banking are Fund transfer, Fund management, online banking, foreign exchange, etc.

LEGAL FRAMEWORK GOVERNING BANKING FRAUD IN INDIA

As time passes, various legislative steps have been taken by the legislature to deal with evils and problems of banking fraud. We have seen in the previous chapter as to how banking fraud has turns evolved from traditional banking fraud to modern banking fraud, which is responsible for

¹ What percentage of Indians use online banking channels?(2nd May,2020,08:15AM)
<https://economictimes.indiatimes.com/wealth/personal-finance-news/what-percentage-of-indians-use-online-banking-channels-heres-a-survey-estimate/articleshow/60231902.cms?from=mdr>

weakening the roots of the Indian economy and banking sector. For a stable economy, it is very much important to have a strong legislature to deal with flaws in the system. We have also seen the growth in fraudulent activity in the banking sector. Powerful legislation is undoubtedly responsible for the safe and secure economy. It is impossible to cover all the legislative measures in one go. Therefore in this chapter, this chapter will be dealing with the legislative measures, Measures will help in understanding the present scenario of Banking frauds. Further, this chapter will be shed light on the suggestions to improve the current banking regime.

It is evident from the various studies that the lack of a focused legal framework is the main reason for banking fraud. However, despite having adequate legislative measures, the measures don't cover all the areas of banking fraud within its purview.

In this chapter, the researcher tried to highlight the provision related to banking fraud under Indian Penal Code 1860, Reserve bank of India Act 1934, Banking Regulations Act 1949, Negotiable Instrument Act 1881, Indian Evidence Act 1872, Information Technology Act 2000, Fugitive Economic offenders Act 2018, etc.

Legislations Governing Banking Fraud

- **Reserve Bank of India**

The reserve bank of India aims to keep a check on all banks. Reserve bank of India provides directions to all the banks, no matter whether public or private banks. It issue guidelines from time to time, which every bank has to follow. It aims at advising banks about the areas that are more prone to fraud and the various mechanisms for the prevention of fraud. RBI made reporting of fraud a mandatory process for the banks. Resultantly Banks must report any frauds conducted. It has mandated all the banks that are regulated by RBI to file a suspected transaction report. It instructs them to follow the robust KYC and CFT guidelines. RBI being a regulator, issued guidelines and circulars for reporting and classification of frauds. It instructs other banks to follow the clarifications and circulars issued by them.

Role of the Reserve bank of India in Frauds reported by various banks

All the banks are required to report actual supervision to the RBI and for that, RBI has one comprehensive reporting mechanism. All the banks have to report RBI about actual or suspected fraud, which exceeds Rs. 1 Lakh within the week. RBI and the Government of India must have full information about all the incidences of fraud and proper actions must be taken quarterly or half-yearly basis.² The report has been designed for the purpose explained above.

² Dr.N.L.Mitra,The report of expert committee(2001) ,Legal Aspects of banking fraud(02nd May,2020,01:15PM) <https://ibbi.gov.in/August%202001,%20Dr.%20N.L.%20Mitra%20Committe%20Report%20on%20Legal%20Aspects%20of%20Bank%20Frauds.pdf>

2) Banking Regulations Act, 1949

Banking regulations Act 1949 aims to consolidate and amend the laws relating to banking. Banking activities and fundamental laws of all the banks in India are governed by the Banking Regulations Act. The main features are that the definition of banking is given comprehensively to bring out the legislation in the entire sphere of banking institutions for receiving deposits, lending of money, and for the investment. Prohibition of non-banking companies from accepting deposits in international trades, the risk of non-payment increases manifold. To mitigate the banking risk, it is advised to include foreign banks within the purview of the legislation. Provisions relating to the detailed supervision of all the banks by the Reserve Bank of India should be utilized. According to the guidelines of RBI, it is vested by the statute to aid banking companies in emergency conditions.

3) Indian Penal Code

Cases are classified into civil or criminal offenses based on the gravity of the banking fraud. Classification of offenses are provided under the Indian Penal Code, 1860, the Code of Criminal Procedure of 1973, and the Evidence Act of 1872. The Indian Penal Code is the prime law that defines the crime. In contrast, the Criminal Procedure Code and the Evidence Act 1872 are considered as substantive law regulating trial procedures of the crime.

Indian Penal code is the Pre-independence law made by the Britishers to come into force on 01st January, 1862. This legislation applies to the whole of India.

Banking fraud is not specifically addressed under the Indian Penal Code (IPC), which does not classify it as a distinct crime. The Indian Penal Code lists a number of ways that banking fraud can occur, including cheating Section 415, criminal misappropriation of property Section 403, criminal breach of trust Section 405, forgery Section 463, falsification of accounts Section 477 A, and theft Section 378.

However, there are situations when the severity of the offence prompts the state to consider that criminal laws are necessary to reduce the problem of infractions. Cheating, theft of property, and criminal breach of trust are all examples of banking fraud.

4) Information Technology Act, 2000 and Amendment Act, 2008

With the advancement of technology, security measures related to technology are also improving. In the year 1994, Saraf Committee³ arranged to make a study on Electronic Fund Transfer (EFT) the following recommendations were EFT and BANKNET communication networks to be established together as its carrier. Relevant legislation to be enacted for the EFT

³ Dr. Nishikant Warbhuwan, Strategic human resource management in public and private sector banks, A relative exploration (04th may, 2020, 11:33 AM)

laws. Introduction to the clearing of Magnetic Ink Character Recognition. For the low-value repetitive transaction, introduction to Electronic clearing service credit. e.g., salary, pension, and an Electric debit clearing for making payments to the utility companies. Computer and communication technology's large scale induction in all the service branches. Card culture and training facilities to be promoted. Most of the recommendations were implemented by RBI. In the year 1998, the Narsimhan committee was formed, and various implementations relating to EFT were made.⁴

Information Technology Act 2000 deals with crimes relating to technology in India. Technology has had a major effect on the banking and finance sector. Security standard and technology is the priority when we deal with internet banking. If the working of security and technology standards is not accurate, then it may not provide an accurate result.

In 2008, the Information technology Act 2000 was amended, enlarging the scope of definitions and also the concept of electronic signatures. Information Technology Act, 2000 had just two sections, which only dealt with computer-related offenses. Amendment Act enhances the scope of better legislation relating to cybercrimes.

The specific issues relating to banker and customers apart from above are:

Intermediary- under the Information Technology Act 2000, the definition of intermediary is given. The banks can't directly refer to the definition of the intermediary as it is very wide to explain. The definition of intermediary was amended in the year 2008 the definition does not changes the definition of intermediary but electronic means are included for maintaining electronic records relating to intermediaries. In the case of *Sanjay Kumar Kedia v. Central Bureau and Anr*, the honorable Supreme Court has held that service providers (intermediaries) are not held liable if they had done the Act with due diligence.

Data Protection- It alludes to a group of privacy regulations designed to safeguard privacy as a result of the gathering of data. Under the IT Act, anybody corporate handling personal data is subject to civil and criminal liability. The body corporate will be held accountable for any carelessness involving the security of data and will have to cover all associated costs. The Act makes no mention of a cap on compensation. The court has the discretion to determine how much the person is being impacted. If a legal contract is broken, Section 72A lays out penalties.

⁴ Encryption on Public Switching Telephone Network (PSTN) lines.

- Admission of electronic files as evidence.
- Treating Electronic Funds Transfers on par with crossed cheques /drafts for purposes of Income Tax etc.
- Electronic Record keeping.
- Provide data protection.
- Implementation of digital signatures.
- Clarification on payment finality in case of EFT.

Compared to Section 72, Section 72A's reach is broader and includes the disclosure of personal information. Till now, issue related to data protection is governed by the contractual relationship between the parties and in case of leakage of personal data. Sometimes with the help of employees of the bank, also data may leak. This is the biggest drawback of the banking system that employees are mostly responsible for banking fraud.

Computer-related offenses and Penalty/ Punishment- The amendment under IT Act covers both civil and criminal liabilities. The compensation under the IT Act in case of civil liability is up to five crores. However, the compensation is subject to the pecuniary jurisdiction of the court. In case of criminal liability, provisions of Chapter XI consist of imprisonment, which extends from three years of life imprisonment and fine as well. Phishing is one among them

Banks to be licensed as certifying Authority- Bank needs a license to issue the digital signature certificate⁵ and Reserve bank of India issue license under section 6(1) clause (o) of the Banking Regulations Act, 1949. The electronic records which are maintained for electronic banking are considered legally valid and permissible.⁶

For the proper functioning of Internet banking, Reserve Bank of India works as a registration authority. Therefore Information Technology Act, 2000, laid down laws relating to internet banking; before looking forward to the legal frameworks given under IT Act, 2000. It is important to know that the main object of the IT Act for the proper functioning of Internet banking is to facilitate e-commerce and e-governance.

5) Insolvency and Bankruptcy Code, 2016

Due to the overburdened cases relating to non-performing loans, the need for a separate court to resolve the dispute in a time-bound manner was felt, which led to the introduction of Insolvency and bankruptcy code. When a debtor defaults in the repayment, the creditor gets the hold on the

⁵ Section 21 of the IT Act

Licence to issue [Electronic Signature] Certificates.–

(1) Subject to the provisions of sub-section (2), any person may make an application to the Controller for a licence to issue [Electronic Signature] Certificates.

(2) No licence shall be issued under sub-section (1), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which are necessary to issue [Electronic Signature] Certificates as may be prescribed by the Central Government.

(3) A licence granted under this section shall–

(a) be valid for such period as may be prescribed by the Central Government;

(b) not be transferable or heritable;

(c) be subject to such terms and conditions as may be specified by the regulations.

⁶ Magnetic ink character recognition is a technology used by majority of banks on their cheques. The technology uses magnetic ink for printing the code, which is usually present at the bottom of the cheque.

asset of the debtor. To resolve the dispute relating to nonpayment of the money due, matter falls within the purview of insolvency and bankruptcy code. The resolution process may be initiated by any of the party i.e. creditor or debtor.

6) Fugitive Economic Offenders Act

The new Act, which comes into force on 21st April, 2018, has the power to confiscate the property of economic offender charged with the offenses of over 100 crores. The offender cannot be prosecuted as the jurisdiction of the Indian Courts doesn't cover foreign land. The special court for the fugitive economic offender is set up under the Prevention of money laundering Act 2002.

A fugitive offender is a person who has committed a particular offense in India, such as banking fraud, which is for or more than Rs. One hundred crores and then fled from India and avoiding facing the prosecution in India. The Preamble of the Act aims to deter the offender and warn him that he can't escape from the law. The intention of the legislature behind this Act is to create a deterrent effect by confiscating the property if the accused refused to come back to Indian jurisdiction before the conclusion of the proceeding.

Laws Relating to E-Banking in India

- **Reserve Bank of India Act, 1934**

Under section 58(2), regulation of fund transfer through electronic means between banks through RTGS and NEFT and any other fund transfer was inserted. RBI encouraged ECS and EFT systems in 1995 and RTGS in 2004, NEFT in 2005, and CTS (cheque transaction system) in 2008.

RBI also has issued various guidelines on security issues and Risk mitigation measures relating to card-present transactions which are relating to credit/debit and prepaid cards according to which banks and the stakeholders directed to initiate actions accomplishing fraud risk management practices which also secures technological infrastructures of all the commercial banks in India. The target given for completing the task was September 2012. Banking laws amendment Act 2012 empowered RBI to call for any information or may cause the inspection of the business of any of the 'associate enterprise' of a bank. The Act provides a legal framework and the procedure for setting up the bank holding companies and also floors relating to the issue of license for new banks.

- **Banking Regulation Act, 1949**

The Banking Companies Act, 1949, which originally went into effect on March 16 of that year, was renamed as the Banking Acquisition and Transfer of Undertaking Act, 1969, in 1969. The key topic of discussion regarding electronic banking is that it is

anticipated that the auditor would find significant frauds during the year when auditing it, as we have already covered the history of the Banking Regulations Act. The auditor must also follow the vigilance report and provide feedback on the system's effectiveness. In accordance with the R.B. Burman Committee's suggestion, banks and financial institutions are required to audit information systems and confirm the policies built into the current system.

- **Negotiable Instruments Act, 1881**

Here cheque includes truncated cheque, which is in the electronic form. According to the definition, it can be viewed as a digital signature in the cheque, which is in electronic form with/without a biometric signature/asymmetric cryptosystem.⁷ The guidelines relating to safeguarding measures are given effect from time to time. The truncated system is benefitting the system all around as it speeds up the cheque collecting process, which results in better services to the customers and also reduces the risk of cheque clearing frauds. In case of presenting the truncated cheque if the collecting bank finds any suspicion about its genuineness, which may cause fraud, destruction of the instrument, etc., then any further information may be demanded by the drawee bank. According to Section 81 of the Negotiable Instrument Act, the banker has to retain a copy of the cheque even after the payment. It is also required to make a note on that, and the difference between the original cheque and truncated cheque should be interpreted as material alteration, which means various legal effects. In that case, it is the duty of the bank/ clearing house, ensuring the exactness of the truncated cheque with the original one. They also need to verify it from the person who transmitted the cheque. According to the opinion of the Supreme Court, the cases relating to dishonor of cheque should have early disposal. Truncated Cheque under NI Act involves additional risks, and banks have to adopt all the adequate measures following the same standards. If required care is not to be taken, the banker will consider liable under section 131 of NI Act, but there is no liability of clearing for fraud and forgery as they can't open the truncated cheque.

- **Bankers Books Evidence Act, 1891**

Even after e-banking coming into force, amendments are still carried on Bankers Books Evidence Act. The definition of 'Bankers books' is defined in Section 2 of the Act. It includes various other definitions as well, like ledgers, cash-book, and other ordinary records of bank's

⁷ any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes'

business about keeping the records in magnetic tape or any other form which ensures admissibility as evidence.

A certified copy means true copy, which is attested in written form and stored in disk, pen drive, etc. if it is in the form of a printout, and then it shall have a certificate of a bank manager or any person who is computer in-charge. In the case of producing E-banking Evidence in the court of law, the amendment will be considered helpful.

- **Indian Penal Code, 1860**

Indian Courts dealt with E-banking fraud combining it with the Indian Penal Code and Information Technology Act. In the case of *Ex. Syed Asifuddin and ors v The State of Andhra Pradesh and others* here section 409, section 420, section 120B of IPC and section 65 of Information Technology Act, 2000 are applied to register the case.

Legal Issues in banking fraud

There are various lacunae in the laws resulting in banking fraud which is explained below:

1) Legal issues against Consumer

There are instances where there is no liability of the consumer, but still, they have to suffer. There are provisions regarding no liability of the consumer, but it will not suffice. Following are the various such issues:

Phishing and Internet Fraud

Phishing can be carried out via sending falsified emails, leaving voicemails, imitating an online banking system, etc. Phishing occurs when a website is created to look exactly like a legitimate online page. The user receives an email from the scammers that sends them to a fake website, where they log in under the impression that it is a real site and update their information. As a result, the stolen data will be exploited in fraud.

Internet users have also employed a variety of dangerous programmes, such as Trojan horses, to spy on screens while they are online. The scammers exploit that to obtain the user's private information.

Theft of identity

In this case, dishonest bank personnel disclose the personal information of the depositors for theft by way of identity fraud. The information is used by the perpetrators to obtain identity cards and credit cards of the victim.

Duplication and skimming of card information

This can be done in various forms, such as copying the credit card number of the client for misusing it. It can also be done by copying the magnetic stripe at the time of capturing the number of the card and pin through the hidden camera attached in the ATM. Then the fraudulent equipment is removed and data will be used for reproducing the duplicate card, which will be used to withdraw the money from the victim's account.

In the cases mentioned above, the consumer is unaware of the fact that someone is misusing his information for which he will be held liable. Some laws support the consumer in the cases mentioned above. In the RBI guidelines, the discretion of the bank is given to waive off the liability of the consumer. In a country like India, most of the population is not very well versed with the technology. People may use the internet but are not aware of the drawbacks such as perpetrators are waiting to take the benefit of their unawareness. In such cases where the victim negligently provides his information to the fraudulent website or through any other mode, he might become the victim of banking fraud. Further, he can suffer financial loss due to his negligence. Therefore word 'discretion' must be removed from the guideline given by the RBI and should be made mandatory to waive off the customer's liability.

2) Legal issues in banks

There are various legal issues which hamper the working of the banking system. Following are the cases in which the bank becomes the victim of the Banking Fraud

Demand draft fraud

Forged currency notes

Banknotes are defined in section 489A of the Indian Penal Code. If the forgery of note can be done successfully, then, on the one hand, it destroys the economy of the country and, on the other hand, made the forger millionaire. Currency note is made of special paper protected with plastic lamination, which protects it from damaging the anti-forgery device. There are various minute details about the currency note which are not known to most of the population. Forged currency note is in full circulation and it is very difficult to catch the origin once note comes into circulation

Fraud loan application

One of the major problems of present times is that the most practiced scams are due to fraudulent loan applications. It can be done by the employee of the bank by hiding their credit history full of financial issues, unpaid loans, by making risky loans appear to be a sound investment for the banks. Many corporations are engaged in over expansion, overstating assets, inflation in their sales and income to be solvent even after becoming insolvent. The employees of the bank sanction their application of loan even if they do not satisfy the conditions for the grant of the loan.

Therefore, the issue involved here is whether the laws relating to auditors are sufficient to deal with the problem of banking fraud? In PNB scam, it was found that the concurrent audit of the bank was done by their unqualified audit teams. If the bank uses its own human resources for the audit, due to conflict of interest, it is not possible to detect the fraud, which might run into crores. It was also found that the central statutory auditor and branch auditor was appointed at the last minute.

It was recommended that the appointment of the Central auditor must be done in the first quarter whereas the appointment of the branch auditor must be done by the last quarter.

According to the author, there are proper laws regarding auditor under section 52 of the Reserve bank of India Act, 1934. Various guidelines that get updated as per the requirement. Section 30 of the Banking Regulations Act deals with audit. It was found that there is no issue regarding laws relating to auditors, but the problem is in its implementation. There are laws and procedure the bank are not adopting it, which results in tremendous loss to the country. Therefore, it is found that there is a need for stringent law that regulates the law as per the norms. The author further noted that the First Information Report was filed too late. Fraudulent guarantee was given in PNB scam was in 10th march 2011, but FIR was lodged on 29th January 2018.

3) Other Legal issues

Role of Investigating Agency

Overburdened bodies with pending investigations, such as the Central Bureau of Investigation, face operational issues in case of banking fraud. In most of the cases, banking fraud are detected too late. By the time of investigation fraudster wipe out trails and then it will become difficult for the investigating body to prove the intention of the wrongdoer. It will also be difficult for the investigating body to find any witness. Many operational issues are also the reason for the failure of investigating mechanisms such as non expert legal paperwork by banker, lack of formal complaints against fraudsters. Poor coordination of the bank employee. Lack of dedication of the employee also leads to delay in the investigation. This instance leads to a low conviction rate of the fraudsters. Therefore, the need of the department to help the investigating body inside the bank and outside the bank is required apart from the legal cell. A group of employees in the banking company should be trained to deal with fraud. Resultantly they can help in the investigation process the fraudsters.

Lack of Whistleblower protection in bank

Due to the lack of whistleblower protection law in India, is it difficult for early detection of the fraud in case of involvement of internal employees. There is a separate Whistleblower Protection Act, 2014, for the protection of the whistleblower. The shortcoming of the act is that it has a limited framework. The Preamble of the Act limits it only to the public servants. Therefore the act covers the exposed corruption relating to government. So the issue involved here is what

about the protection of the whistleblower in the case in private banking companies? The RBI has mentioned some clauses concerning private banks and foreign banks under the head of 'Protected Disclosures Schemes for Private Sector and Foreign Banks.' According to that, Private banks and foreign banks 'may' frame their separate Protected Disclosure Schemes on their terms and conditions. Also, the Private Banks and Foreign banks may complain under "Protected Disclosures Scheme for Private Sector and Foreign Banks." But the problem is that the scheme does not cover the Anonymous/pseudonymous complaint, which causes the major issue to the whistleblower. Rajan Nair was the whistleblower in the case of Cadbury India. After that, he faced serious problems; his job was at stake, due to which he became jobless and was forced to leave the company. Later he was not getting a job elsewhere. Therefore, there is a need for amendments in the schemes held by RBI that whistleblower must be protected by covering anonymous and pseudonymous complaints. According to the author, the reason behind employees not coming forward is also because no protections have been given to whistleblowers. If there was the existence of a proper mechanism for the whistleblower, the scam, which was unearthed such as PNB Scam, ICICI Scam, Kingfisher scam etc., could have been protected.

Issue related to Internet banking and commerce

In the case of internet banking fraud, the action will be taken against the one who breaches the data security procedures under section 43 of the Information Technology Act, 2000. Still, the legislature did not implement the measure relating to data security, which protects the consumer. There is no provision mentioned in the IT Act, which laid down the security of the consumer.

Secondly, according to the comparative analysis with the United Kingdom, it was found that improper identification of the new consumer taken by the bank leads to the risk upon the bank. Data Protection Act 1998 deals with the provision in case of the negligent act of the bank under section 2. Bank has to pay the damages if it fails to maintain the adequate security procedure.

Therefore according to the author, there is the need for a law that will hold the employee liable for their negligent actions and also the law which protects the interest of the consumer.

In year 2017-18, the banking and finance sector suffered a huge loss. According to the report of the Ministry of External Affairs, around 30 people left India, who is accused of financial scams/frauds. There are extradition laws for the people absconded from India, but it was inadequate to control the white-collar crime and get back the absconder. Therefore the need of the new act was felt, which leads to the introduction of the 'Fugitive Economic offender Act.' Most of the provision of the present act is same as the Prevention of Money Laundering Act, 2002, but the aim of both the statutes are different.

Under Section 4 of the Fugitive Economic Offenders Act, the power to the director or deputy director has been given to declare the individual as 'Fugitive economic offender.' But the reason why no other officer is allowed is unclear in the act. Under Section 5 of the present Act, the permission of the special court is required to the Director or the Deputy Director for the

attachment of the property of the fugitive economic offender. Here special court means Session Court, as explained in Section 43(1) of Prevention of Money-laundering Act hereinafter refer as PMLA.

The act seems arbitrary as it is going against the principle of 'innocent until proven guilty.' Under the act, the power has been given for the attachment of the property before the conclusion of the proceedings. In this way, Section 5(2) seems to be arbitrary, although pre-conviction is not the new concept in Indian history. Section 54(1)(c) of the United Nations Convention against corruption (UNCC) was ratified in the year 2011. So, therefore, the present act has taken provision from there as it is necessary to deter the accused.

The threshold limits of 100 Crores evade various wrongdoers from the provision, with the fixed monetary limit of 100 crore, the nature of the offense should also be considered. The said act covers the domestic as well as foreign property, but when it comes to foreign records, India lacks the extradition records. More than 150 requests for the extradition were pending before the foreign countries till 05th April, 2018. Therefore there is a need to strengthen the foreign relations for simplifying the procedure of extradition.

Section 62 of the PMLA provides for the punishment for vexatious searches to the officers considering it. The present law also needs some relevant provisions addressing the issue.

Such a nature of fraud does not only cause economic harm to the country but also disturbs the image of the country. The first person declared as an economic Offender was Vijay Mallya. The act is effective in dealing with the offender who evades from the Indian jurisdiction and it further helps in dealing with the problems of the banks, economic and financial sector and recovering amount back. It acts as a deterrent for the wrongdoer.

Another issue involved in the case of the Fugitive economic offenders act, it disallows the offender to defend civil claims. According to the author, the civil claim must be allowed to the absconder on the condition that the monetary benefit from the civil suit will be helpful in the repayment of the money which the absconder defaulted and through the civil suit, the victim will be benefitted.

second issue involved in the case is that the legislation disentitles the firm or limited liability partnership in which the person has a stake or has any managerial function. Even though they are not participating in the wrongdoing, the company or partnership, innocent shareholders, and employees may suffer losses as a result. The absconder can be relieved of his official duties and new managers must be appointed in his stead, which won't interfere with the operation of the business. It is also believed that until the right procedures for international treaties and legal agreements for the confiscation of the property placed outside of India will be made, the act's actual goal won't be realised. The comprehensive list must be issued by the Ministry of External Affairs, where thirty-nine countries are the signatories with India. The treaty provides information relating to the mutual legal assistance treaty. There is the need to strengthen the list for the confiscation of property situated outside India.

Another issue involved is that under Section 20 of the Act Central government has the power to omit or insert any offense, but the power is not subject to any scrutiny. There will be a chance that the amendment may be done due to the political pressure or under the corridor of power. Therefore according to the author, the amendment must be made after the sanction of the legislature. This will maintain the sanctity of the law.

The Battle against the Non-Performing Assets Issue

According to the report Non-performing assets, NPAs have grown from 9.2% to 10.2%, amounting to Rs. 8, 36,782 crores whereas the developed countries such as the USA have 1.1% and the UK has 1.0%.

The Financial institutions used the term Non-performing Asset for the loans and advances for which the principal is due and on which no interest payment has been made for a long time. Loans become NPAs when they are not paid and remain outstanding for ninety days or more than that.

India has the major problem of NPA, according to the survey conducted by the International Monetary Fund in the year 2019. It was found that India ranks 33 out of 137 nations in the list of bad ratio of NPA. Canada has the lowest NPA ratio, i.e., 0.4%, followed by South Korea, 0.5% and Switzerland, 0.6%.

According to the report, it was found that due to the NPA, the stock market of Japan was crashed and major credit operation was shut down, so to come out of that the Japanese government made use of Public capital to fund the banks resulting into positive change in the stock market.

There is a need for voluntary out of court centralized restructuring process with the involvement of the central bank to act as a coordinator in between the creditors and should also preserve the market's faith.

According to the recent debate, the major issue stormed in the house of Public Accounts Committee (PAC) of the Parliamentary Panel, as per the discussion the causes of the increase in Non-performing assets. PAC highlighted possible six reasons responsible for the spurt of NPA: Inaccurate and sluggish Credit Risk Appraisals and advance monitoring in Banks.

delay in getting legal and other important approvals for the activities under execution.

Improper Due Diligence of the Borrowers at the basic level involving the credit rating of such borrowers.

Irregular compliances and dissipated activities in deciding the nature and character of the Borrowers and their eagerness and ability to reimburse the loans sanctioned.

Improper valuation of the security hypothecated with the issuing bank, which has been the primary reason for insufficient recovery of the outstanding loans.

Willful default, faulty loans involving corruption in some cases.

Lots of efforts are given by the government, regulatory bodies, banks and every citizen of the country towards a smooth banking system because ultimately, it's affecting the public at large.

There are various credit information platforms such as CIBIL, CRISIL, ICRA, Experian, which are continuously analyzing and researching on the defaulters and their data provided to the banks. This will assist the banks in reducing ineffective lending. The data will be provided to the banks against some charges. It is also suggested by the author that the bank should publish the list of defaulters in the public domain. This will create a deter in the mind of the willful defaulter and this may lead to a notable drop in the NPA rate.

There are five resolutions recommended by the Mehta Panel, which was led by Mr. Sunil Mehta (Non-Executive Chairman of Punjab National Bank.) It was suggested that concentration must be on smaller assets having exposure up to Rs. 50 crores. The process of resolution must be non-discretionary and completed within time-bound of 90 days.

This approach is considered fertile for any category ranging between fifty crore to five hundred crore. In this resolutions bank gets an internal arrangement among the creditors. The lead bank has been given the power to implement the resolution plan.

Where the loan exceeds Rs.500 crore, there shall be a committee comprising of Asset Management Company, Asset Reconstruction Company and Alternate Investment Fund, and multiple options to be explored about the options for the banks and the companies to stabilize the value of an asset.

Asset Trading Platform is presumably the most inventive method which the business can add under its operation as it can help Public Sector Banks (PSBs) to restructure their credit portfolios. This method will help and permit the PSBs to offload and unburden a portion of their huge corporate exposures and resultantly, PSB's can focus more on SME segments.

There is no deficiency of any activities taken by the Government in the course of recent years to address the dark past of NPA's. Public and Government are very much concerned and informed about the upward pattern in NPA and it has become a general misfortune as it is hitting hard our economy. The issues have been pinpointed and we need just a push to infuse system and framework for a strong, dependable and clean Indian Banking System.

Conclusion

Various laws deal with banking fraud, and the Reserve bank of India is the regulatory body that controls the function of the banking sector. Happening of the all the events relating to banking have to be informed to the Reserve bank of India. Reserve bank of India is the Banker's Bank and brain of all the banks. There are various acts under which banking fraud may be classified, such as the Indian Penal Code, Indian Evidence Act, Information Technology Act, Fugitive Economic Offenders Act, SEBI, etc. Under the various regulatory framework discussed above, there are some lacunae in the laws, which causes a continuous increase in the banking fraud. In the previous chapter, the discussion about the historical background of the banking fraud and the expansion of the banking fraud from ancient to modern generation was dealt. In the present chapter, as the frauds started taking its pace, the need for proper and advanced legislation was felt. Therefore, various amendments are made, which now includes sections relating to fraud by way of electronic means. In the next chapter, a comparative study of the laws relating to banking fraud has been made to find out the lacunae in the Indian laws and to see how to improve the present laws.

