

Emerging Trends of Indian Banking System: Check & Control Fraudulent Activities

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Abstract: The banking sector is increasingly harnessing the information technology in a big manner to bring by lesser service satisfaction through increased effectiveness, delicacy, inflexibility and speed in banking deals completion. The 21st Century has witnessed the electronic fund transfer (EFT), automatic teller machine (ATM), Real time gross settlement (RTGS) in data processing accoutrements, automation in banking services, tele-banking, mobile-banking, use of various disbenefit/ credit cards, etc. which has made banking easier, timesaving and precise. The technological advances have changed the face of banking but at the same time have attracted the attention of the greedy unethical money-chaser people towards itself. As the threat of losing anything in the attempt of snatching money off from the electronic mode of guardianship of money is much lower than the possible gain that could be generated indeed through one single banking fraud. In simple words, the old ways of frauds are snappily giving space to new technological frauds. The perpetrators of frauds are using the ultramodern technology for commission of Banking Frauds it's so charming for a wicked greedy mind. Also, as a result, there's the lurking fear of numerous that similar frauds may remain undetected. Banking frauds are effective defence against this imminence needs legal munitions to decry the frauds, to collect attestations of the frauds and to insure on-recurrence of the Banking Frauds. The hanging rising trend of Banking Frauds makes it imperative that new advanced ways and means are innovated to contain the curse of Banking Frauds in the 21st Century. This study concentrates on the traditional frauds, their procedural aspects and new ultramodern Banking Frauds. The study also concentrates on the legislative measures espoused for the prevention for banking frauds within the legislative frame.

Keywords: Legislative, Frauds, Advances, Technology, Banking, Automation,

INTRODUCTION

A common man deposits his money in a bank to gain a sense of security for his money, not for the sake of the nominal rate of interest which the banks generally offer, and every time, a Banking Fraud is executed, this trust of the common man is traduced. Scarcely a day passes by without news appearing in public or original journals involving some kind of Banking Fraud in the nature of theft, thievery, ATM/debit card fraud, credit card fraud, loan fraud, or some other new age internet banking or mobile banking related new fraud. In simple words, while the operations of the bank have come decreasingly significant, the cases of frauds in various banking deals are also on the rise over the period of time. Ingenious and clandestine techniques are being espoused by fraudsters to perpetrate frauds, taking advantage of loopholes being in the systems and procedures. In fact, the situation is fleetly turning

into an imminence and it affects the banking business negatively. Hence, there's a great challenge before the nation to wind this wrong. Banking fraud isn't a new miracle; maybe it's a problem as old as the banking system itself. But its significance has plainly increased in present times, as the compass of banking has increased manifold. Today banking business' has expanded to discounting of bills, underwriting, dealing in stocks, agency functions, insurance, guarantee, reprisal and numerous other businesses. Therefore the possibility of huge loss that a simple fraud can beget has increased manifold. Law has to manage with challenges of new renaissance and in the changing script; it's supposed to review its part towards a better and progressive society. The new world of digital technology claims penetration of law combined with technology. This expects innovative intervention to identify and incorporate or produce

the bits of legal particles with great vigour which when used for conceivable deals, will permanently give results to meet out the legal challenges thrown out by the 21st Century developments.

WHAT IS BANKING FRAUD

The term 'Banking Fraud' contains two elements namely banking' and 'fraud'. Beginning with simple money- changing as per it's the foremost traced history, the term 'banking' has today set up synonymy with five core functions of accepting deposits, lending, investment, prepayment and easing of pullout of money. And in common parlance, 'fraud' is a dishonest act done with the intention of gaining benefit by causing loss to others. Fairly speaking, 'fraud' refers to a false statement of fact by a person or his agent who himself does not believe the statement to be true, made with an intention of deceiving another party, and converting him to enter into a contract on that basis. Therefore 'fraud' is a veritably wide term which includes any behaviour by which one person intends to gain a dishonest advantage over another. It signifies not only act of commission but also an act of elision which is intended to beget unlawful gain to one person and/or unlawful loss to another. Consequently 'Banking fraud' is a broad term used to signify all types of frauds committed in a banking system. It may be committed with accounts, negotiable instruments, loans, securities or any other banking service. Again, it may be pulled off by client, hand, and stranger or by the bank itself, or by two or further of parties in collusion with each other. A common term to describe all similar frauds is 'Banking Fraud'. Banking frauds may be committed by way of concealment, embezzlement, breach of trust, theft, cheating, phony, falsification of accounts; conspiracy etc. Banking frauds are veritably common in deposit accounts. Hypothecation related frauds feel to be the weakest

area in the banking practices. A number of frauds in banking institutions are also set up relating to cheque frauds, which still poses a hanging challenge to banking institutions. The study categorically points out the frauds through phone; the main areas of similar fraud are forged hand, forged currency, forged documents and forged seals and prints. The study discovered the most remarkable point of 21st Century to be the technological development and stressed the frauds relating to computer and technology. On the same manner, credit card frauds, money laundering frauds and swindles are some of other conspicuous forms of banking frauds. These new types of banking frauds feel to be just a tip of the ice-berg of banking frauds which has the eventuality of spelling down for the easily sailing of banking system.

LEGAL PROVISIONS TO CHECK BANKING FRAUDS

With the passage of time, numerous legislative ways have been taken by the legislative bodies of India to deal with multitudinous social immoralities and problems. Presently frauds generally and banking frauds in particular, have surfaced as a socio- profitable wrong. As the antedating Chapter makes it clear that banking frauds have been quietly weakening the roots of the banking and profitable system of India. And a strong, stable, secure frugality is a prerequisite for getting a important nation in the present world order. A robust legal frame is really an imperative part of the necessary measures for creating a safe and secure public frugality. As a matter of fact, it's set up that colorful Indian legislations are dealing with the imminence of banking frauds. It isn't possible to deal with all the provisions as there is possibility of breach of different laws by indeed one single act of banking fraud. Thus, it would be licit to study those legislations which stand to face pitfalls and challenges of banking frauds in the 21st Century.

Therefore, an attempt has been made to point out the provisions dealing with banking frauds under some of the important and applicable general legislations under which nonstop new confines of banking frauds have been recaptured. Following are the certain measures taken to check out the Banking frauds

i. Under Indian Penal Code

Chapter XII of the Indian Penal Code, 1860 defines the offences relating to coin and government prints, and prescribes the discipline for these offences. Chapter XVIII named 'Offences against Property' covering Sections 378- 462, the second largest chapter of the Indian Penal Code, 1860, is the incarnation of the State's attempt to requital violations of property rights through felonious law within the home of India. Banking fraud surely includes an offence against the property. The prominent provisions of Chapter XVIII, that deal with 'Banking fraud' are, videlicet (i) Theft (ii) highway robbery (iii) thievery (iv) Dacoity (v) Felonious Misappropriation of Property's (vi) Criminal Breach of Trust and (vii) infidelity. Under Section 452 of the Code of Criminal Procedure, 1973, there's a provision for restoration of stolen property to the owner.

ii. Under Indian Contract Act

The banking Business is basically contractual in nature and in governed by the provision of Indian Contract Act. The relationship between civil liability under the Contractual Law and the problem banking frauds has been proved multitudinous times. therefore, study of the provision of Indian Contract Act 1872 and problem of banking frauds has been taken up together to explain the impact of general contractual law on the curtailment or cure of the civil wrong of banking fraud. The account in Banking Institution. On the fulfilment of prerequisite conditions it's the bank who accepts the offer of the client and a person becomes the client

of the banking institution. After expression of this contractual obligation both of them carry on banking business as specified under Section 6 of Banking Regulation Act, 1949. Once the relationship is established, it lays down the foundation of multitudinous banking activities through negotiations. When, the parties enter into a contract to carry on the banking deals the factors of concurrence may not be present due to abecedarian crimes like compulsion, under influence, fraud, misrepresentation or mistake. In case, any kind of ambiguity occurs, and a party to the contract pleads that the concurrence which is one of the essential elements of Section 10 of Indian Contract Act, 1872 isn't free, the legitimacy of the contract is in danger and can be challenged. The apparent and real concurrence in the deals of banking is veritably important. However, but the obsessive forces in the nature of overdue influence, fraud etc, If the parties no way really intended to enter into a contract. As mentioned above, live, in those situations, the contract can be challenged in the court of law. The experimenter would like to point out then that if the concurrence which is taken from the parties is mala fide, rather of bona fide, the impacts of similar sale creates an purposeful act which amounts to fraud.

iii. Under the Law of Torts

The law of torts, a creation of common law system, is that branch of justice delivery medium which provides relief in those civil matters wherein else the council scheme has failed to give. A tort is generally understood as a civil wrong other than breach of contract and breach of trust, the remedy for which is a common law action for unliquidated damages. All those cases of banking frauds which would fall outside the dimension of Indian Contract Act, 1872 shall be covered for civil remedies under the law of torts. As tort law is that branch of civil law which has remedy for all those wrongs not

chancing requital anywhere differently grounding its compass on the principle of “ubi jus ibi remedium” i.e. where there's a right, there's a remedy.

iv. Under the Indian evidence Act

With Reference to Banker's Book evidence Act, 1891 the success of administration of justice depends upon the proper donation and appreciation of presented evidence in nearly all the cases before the Courts of law. So far as the banking business is concerned, it's grounded on written instruments or documents which are used for concession and other purposes. These instruments papers are factual attestations which can authenticate legitimacy or else of banking sale. In case any difference emerges or there's confusion in any manner applicable to the banking deals, this documentary evidence can be produced in the court of law to find out the true position of fact. Being a comprehensive legislation, the evidence Act is applicable in nearly all the cases having whether civil or felonious nature. The evidence Act admits evidence only if it's applicable, material, related to subject matter and deals with the issues involved in the case. As a procedural demand, the parties try to prove other party's intention or ideal beyond a reasonable mistrustfulness, which is the standard needed by law. Being an important part of adjective laws, the Indian evidence Act, 1872 along with the Banker's Books evidence Act, 1891 help both civil and felonious law in their perpetration by helping courts in drawing consequences after proving the authenticity of data. This function of these legislations fulfils the primary necessity of chancing out the verity in administration of justice. These laws point out to the latent and patent inscrutability through attestations and give ample occasion for doing justice. This further than Century old marquee legislation still in 21th of Century after emendations caused by the enactment of the

Information Technology Act of 2000, facilitates adjudication of matters by furnishing procedural support to requital the grievances against the imminence of banking frauds.

A logical perusal reveals that we, the people of India look towards the courts as provider of social and profitable justice in the independent ultramodern India. But in a popular Country, courts have a positive limitation of acting as 'interpreter of law' and not as 'creator of law', as the task of creation of an applicable law is set up to be stylish suited with the popular representatives of the people of India in the Indian Parliament and State Houses. Under the broad order of general legislations, the Indian Penal Code of 1860, the Indian Contract Act of 1872, the Indian evidence Act of 1872 along with Banker's Books evidence Act, 1891 and the Law of Torts, despite their age have created a ground-position to fight against the imminence of banking frauds. Out of these legislations, the Indian Penal Code in particular has proven itself useful in containing the cases of banking frauds. Still it's apparent that these 19th Century legislation despite their further than Century old medium has shown courage in combating the ever- evolving 21st Century banking frauds.

CONCLUSION

In the absence of a comprehensive law, it's relatively insolvable to address the challenges of 21st Century's Banking Frauds by simply taking into consideration the laws passed during the 19th and 20th Century. It shows that at the time when the technological development was applied pragmatically to offer the stylish possible services to the client, no concrete study was canalized to prepare a comprehensive legislation to address the pros and cons of converted situation. No doubt that the Information Technology Act, 2000 was legislated, but this mama legislation on information technology is supposed to address innumerable

issues by considering colorful aspects and goods because of wide and different use of information technology in the 21st Century. The banking sector as a soul of the fiscal system of the Country needs proper care by independent comprehensive legislation. This step has to be taken after soul-searching, which may have all the possible answers to the known and possible difference being in the system. This is the right time to anticipate and annihilate this wrong of Banking Frauds, before it becomes a public issue. This is an applicable time to prepare the legislative frame to check banking frauds and its arising trends in the 21st century. The multitudinous challenges faced by the banks have needed re-evaluating the legal strategies and processes in order to remain active in the dynamic terrain. A logical perusal explosively reveals that the banking system, therefore, is facing challenges from the developments taking place in society and from the revolution brought about by neo-scientific technology. The 19th Century laws meanly supported by the 21st Century incremental legislations are unable of holding the guard against the constant attack of Banking Frauds. Hence, the need of perpetration of suggestive measures, further futuristic exploration and expert guidance on the issue of Banking Frauds cannot be dissented with.

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