UGC Approved Journal
© UNIVERSAL RESEARCH REPORTS | REFEREED | PEER REVIEWED
ISSN : 2348 - 5612 | Volume : 04 , Issue : 13 | October – December 2017

Frauds in Banking Sector and Legal Liability

Dr . Manish Bhardwaj
Assistant professor in law Vaish college of Law Rohtak

Abstract
The constant prevalence of scams in the banks is not a newly observable phenomenon. Frauds in Indian banks simply indicate that financial flexibility increase tendency of shallow markets to embrace excessive speculation and impair development of the market in such manner that recovery looks tough. Revelations of fraud, indications of insider trading and a consequent collapse of investor interest have led to an almost in suppressible slide in Indian banks. The paper will also examine distinct sorts of fraud and corrective approaches. The study deals with various sort of preventative, detective mechanism necessary for fraud investigation.

Keywords : Dishonest Intention, Forgery, Computer Fraud, Default, Inspection.

Introduction

The banking system is vital in building a robust Indian economy. A banking institution is vital in modern life. It is the engine of a nation's economic progress and the backbone of a modern financial system. The traditional banking practise in India has undergone a paradigm shift. Corrupt banking practises owing to lack of transparency and oversight harmed the banking industry's goodwill and common good ethic. From 1770 until 1920, maximising profit and illicit financial transactions took precedence, even at the expense of other people's social and economic rights.

In 1991, India's economy entered a transformational period. Giving the private sector great chances to expand the financial industry prompted radical changes. Due to ambiguity, reduction in priority sector lending, internal assessment of balance sheet and audit of banking institutions for transparency, direct control of banking institutions by Reserve Bank were some of the changes made to the banking sector by the Narasimham Committee.

The Indian Penal Code does not define fraud. Despite the Indian Penal Code's reference of penalty, fraud is still perpetrated and executed. Section 17 of the Indian Contract Act, 1872 defines fraud broadly. It is a deceptive agreement in which one party induces the other to think certain facts that are not true. In a legal relationship, it is a tactic used to hide facts from the other party. In every example of fraud, there is an element of unfair advantage and excessive profit. Financial fraud is a particularly sensitive subject that needs to be handled with care and effort, since it impacts public trust in the broader market system. Customers rely on a financial institution's durability and stability for social and economic reasons. In reality, public trust and confidence are the major drivers of banking industry growth. Constant market dissatisfaction and failure, unexposed and undiscovered frauds erode financial institutions to the point that effective governance is harmed.

Bank fraud is a type of deception used to gain unlawful money and financial assets held by a financial organisation. Nowadays, there are several ways to misappropriate, some of which are

UGC Approved Journal
© UNIVERSAL RESEARCH REPORTS | REFEREED | PEER REVIEWED
ISSN : 2348 - 5612 | Volume : 04 , Issue : 13 | October – December 2017

illegal, and others which are complicated by jurisdiction. Possibility of professional theft, dacoity, burglary, and robbery due to the amount of fraudulent behaviour. It can be part of organised or white-collar crime, and it can be done in a planned and purposeful way. It is evident that any business dealing with big amounts of money is prone to fraud, and this is especially true for businesses or individuals heavily indebted to banks. Clearly, the incidents of financial fraud are likewise rapidly increasing.

Market uncertainty and speculation play a vital role in the expansion of financial institutions. However, fraudulent instances in Indian banks might raise financial flexibility to the point where excessive uncertainty and high risk of conducting business result in market disintegration. Banking fraud, insider trading, and the resulting loss of investor interest have caused an uncontrollable collapse in Indian banks. There are many dimensions of banking fraud such as manipulative practises used in the use of cheques, deposit account fraud involving illegal money transfers, hypothecation fraud involving doubt and misrepresentation of movable assets, and loan fraud involving high default rates with deliberate intent. Bank scams are spawned & structured in three ways:

Banks and non-banking financial entities are under financial pressure to explore commercial possibilities. A persistent economic slump and a competitive business environment have forced banks to ignore security concerns and deviate from standard procedures. To gain maximum profit, all anti-competitive practises have been employed, even violating bank regulations.

Adverse Effect of Fraud

Bank fraud is a common occurrence that goes unnoticed. “Frauds cause monetary loss and damage to the bank's reputation and goodwill. Serious aberration & misapplication resulted in fraud will undoubtedly raise questions about the institution's guarded technology capabilities and conventional protection approach.

Frauds involving Internet banking, mobile banking, and ATMs have eroded client confidence in these services. Fraudulent activities will also affect bank profits and general efficiency. It can erode productivity and harm investor interests, increasing operational and capital risk for the bank. It can stifle banking business development, disrupt liquidity, and mismanage capital adequacy rules. The level of default in the financing process has overloaded the securitization firm.

Recommendation of A K Ghosh Committee on Banking Frauds

The Reserve Bank of India is highly worried about the surge in financial fraud. So the Reserve Bank of India set up a high-level committee headed by A K Ghosh to investigate bank fraud and associated malfeasance.

Banks are supposed to be accountable for lending, investments, and the balance sheet. The Reserve Bank of India's consent is required for portfolio examination. In circumstances where there is a vigilance factor, the vigilance officer should send the case to the chief vigilance commission. The committee explained that savvy clients might take unfair advantage of bank employees who are negligent in their obligations and safety precautions.

Possible Types of Frauds Occurring in Banks

Frauds occurring in case of deposit accounts

Unsafe practises such as improper identification of the individual or his origin may result in abuse of the account through false or impersonation. In the same vein, unauthorised withdrawals from a customer's account are feasible. It can be done by tampering with the passbook or by assuming the role of joint account holder without the customer's consent".

Some fraudulent tactics can be used to pilfer financial services. A fraudster or impostor might easily take money by using an unlawful chequebook with a phoney signature. Counterfeiting checks and bank draughts is also used to scam clients. Even in conventional banking, fraud happens when uneducated customers rely on their thumb imprint on the relevant paperwork. Forged fingerprints are used to deceive and scam consumers.

Fraud arise in case of lending process

One of the most important suggestions of nationalisation is to succeed in commercial lending priority area. The priority sector lending initiative drew enormous amounts of money from clients in numerous sub-sectors. Several defaulter lists were seen. The plan was intended to help customers in small and medium-sized businesses, agriculture, and rural areas improve their economic condition, but it failed owing to customers' inability to repay loans and sometimes fleeing their homes or businesses. Bank workers do not properly scrutinise papers for loan procedure or actively mislead other immaterial information for personal monetary profit as bribe.

In the loan process, some consumers purposefully employ hypothecated items whose prices fluctuate over time, while banks are first kept unaware. In certain circumstances, banks are misinformed regarding the legal status of loan collateral.

"Fraud arises in the era of modern technology"

The move from conventional (paper-based) to contemporary banking has dramatically improved service efficiency. The main benefit of this transition is that financial services are now efficient and fast. Almost all bank branches are now automated for paperless service. But the rise in cybercrime is frightening and cause for concern.

Few types of fraud are particularly susceptible.

- Spy-software: Fraudsters employ this activity to decipher passwords and infiltrate systems to steal data and money.
- Hacking is another nasty method used by thieves to get unauthorised access to computer systems' information. This is done to gain illicit financial gain as well as permanent harm to the other person's system.
- Fraudsters monitor signals and acquire passwords to withdraw money through wiretapping. This is done by tapping the wire of an ATM when a consumer withdraws cash.
- Though internet banking is more efficient owing to less difficulty, faster procedure, and lower prices, there is always a big concern about security and risk. Cyber thieves use

deceptive strategies to get clients to visit their websites and download or read anything, trapping them.

- They entice consumers by promising lucrative schemes, and then they steal all sensitive data stored on the customer's computer system. Systematic credit or debit card scams occur where criminals utilise the card to fraudulently take money.
- Credit card duplication is the most prevalent fraud tactic. Theft of cards and exposure of sensitive information like PIN numbers are also part of credit/debit card.

"Legal Concepts Relating to Bank Frauds"

Forgery is a felony committed with the aim to cause hurt or injury. A record must exist with well-defined words, markings, and numbers so that it can be utilised for criminal purposes. A person who gains excessive benefit at the expense of another is only regarded dishonest. A fraudulent conduct always involves intent to deceive for illicit gain.

Whenever the issue of forgery is raised, it is evident that the act should be accomplished with the purpose to deceive, even if real damage or injury is not required. It is also not required that a fraudster has relative authority or a reasonable possibility of succeeding. In reality, no prior interaction or contact between the forgers and the victim is required. So anytime, a human.

It's critical to grasp what cheating means in criminal law. Cheating is a dishonest conduct using deceit to get a property or perform an act. A bank employee's position carries a lot of responsibility. His service is based on trust and faith. He must follow his superior's instructions and follow the method specified by his employment contract and the Reserve Bank of India's banking rules. When a banker misappropriates collateral placed with the bank for a client loan before the loan term expires or default occurs. This activity will result in a criminal breach of trust since it involves improper and inappropriate use of property in violation of the law and causing disproportionate loss to another. 9 So it is vital to examine the bank's whole operation. Periodic action inspection and monitoring over specific concerns should be addressed seriously. Suspicious transactions involving vicarious responsibility require a particular level of awareness and precaution.

Every bank must account to the superior bank for all activities and transactions. A bank's primary job is to prepare yearly reports on time and balance sheets free of errors and ambiguities. True accounting demand a thorough approach. Sections 489A through 489E of the Indian Penal Code deal with the use of counterfeit cash notes. To diagnose the problem quickly, two cautious concepts should be used simultaneously: fraud control and detection.

Preventive method – It is critical to clearly grasp the obligations and duties involved in any transaction. Risk assessment is essential to detect suspicious transactions that may be fraudulent. Transparency is ensured via internal examination and audit of bank activity. Minor discrepancies and errors in any action should be investigated quickly and resolved. The Banking Ombudsman Scheme 2006 was designed to hear complaints and resolve disputes connected to poor banking service.

Detective method- This is a classic way of checking small or big discrepancies in banking transactions. This duty requires a supervisor, auditors, or other external agency. Forensic specialists or tools do routine investigations into clients' past business affairs, financial history, and nature of commercial transactions with third parties. The Reserve Bank of India must now financially and administratively support the establishment of a fraud-monitoring cell in every public and private sector bank. It will surely assist shorten the time between internal bank investigations and reporting to the authorities. Certain instances involving high-level fraud might be complicated by administrative or jurisdictional issues. These matters should be addressed seriously by the CBI without financial or political pressure.

Conclusion

Currently, our banking financial institutions require a robust mechanism to identify and diagnose fraud, since this system is easily compatible with a complicated fast-growing industry, and is vital to the banks' survival and growth. This evaluation and risk management can help the bank avoid long-term financial losses while enhancing its reputation and trustworthiness. It protects against all types of fraud from online banking, ATM, credit card usage, etc. Banks must prioritise fraud prevention without wasting time. They should not limit their search for solutions to complex challenges like credit cards or retail loans. Their action plan and implementation should be in line with existing banking regulations. In a competitive market, they must also change their regulations and conventional banking procedures.

References

1. Zubair Ahmed Khan, Assistant Professor, University School of law & Legal Studies, Guru Gobind Singh Indraprastha University, Dwarka, New Delhi.
2. Nitant P. Trilokekar, Audit in Computerized Environment, Reporting in JilaniGhosh Committee Recommendations, WIRC on Bank Audit, available at: http://tnkpsc.com/Image/JALANI%20GHOSH%20RECOMMENDATIONS.pdf
3. Nitant P. Trilokekar, Frauds relating to Computers, Audit in Computerized Environment, Reporting in JilaniGhosh Committee Recommendations, WIRC on Bank Audit,pg.7, available at: http://tnkpsc.com/Image/JALANI%20 GHOSH%20RECOMMENDATIONS.pdf
4. Section 463, Indian Penal Code,1860.
5. Section 45 , Indian Evidence Act, 1872
6. Section 47 , Indian Evidence Act,1872.
7. Cheating by Personation, Section 416 , Indian Penal Code,1860
8. Criminal Breach of Trust, Section 405 , Indian Penal Code,1860.
9. Falsification of Accounts, Section 477 A ,Indian Penal Code,1860.