
FRAUDS IN BANKING SECTOR IN INDIA: ANALYSIS AND PREVENTIVE MEASURES

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ABSTRACT

This paper aims at studying the number of frauds being committed bank wise, sector wise and its impact on the performance of the banks. A study was conducted on the impact of frauds on Punjab National bank. This study is based on secondary data collected from various reliable sources. The study reveals that there is a varying trend in the growth of frauds during the period of study. Through the study, it can be observed that the instances of financial frauds have been increasing gradually mainly in the public sector banks. The Punjab National bank got affected the most and this impact appeared to be highest in the year 2018 when the fraud came to light. The overall quality of the bank's loan was not good and was negative as a result of revelation of fraud.

The banking sector of India has found an ample amount of growth and differences from the liberation of the economy. Despite the fact that the banking sector has a better regulatory framework and it is well supervised, this sector experienced a variety of challenges when it comes to illegal practices & Financial frauds. This study enlightens issues such as frauds in the banking industry, illegal practices by using secondary data like literature review and case studies covering all the players involved in such malpractices. There are certain issues like rising in NPAs in recent years basically in public sector banks. The study also provides some proposals to reduce the degree of future frauds in the banking sector. This study also provides the numbers and type of frauds occurring in the Indian banking sector.

INTRODUCTION AND RESEARCH METHODOLOGY

1.1- INTRODUCTION

In Black's Law Dictionary 'fraud' is defined as :

1. A knowing misrepresentation on of truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is willful), it may be a crime.
2. A misrepresentation made recklessly without belief in its truth to induce another person to act.
3. A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment.
4. Unconscionable dealing, esp.in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain.

In India, the basic Penal legislation i.e. the Indian Penal Code, 1860 does not define the term 'Fraud'. The Code just explains the terms 'fraudulently'¹, 'dishonestly'² and to an extent covers the element of 'fraud' in the offence of 'cheating'³, 'forgery'⁴ etc. Under the Civil Law remedies, the Indian Contract Act, 1872 extensively defines fraud and under the law of Torts the wrong of 'deceit or fraud' is recognised.

In **Derry v. Peek**, Case Lord Herschell observed “Fraud” means a false statement made knowingly or without belief in its truth, or recklessly careless, whether it be true or false. The fraudulent misrepresentation is a false statement which is made by a person who does not believe it to be true.⁵

BANKING FRAUD

In the *Black's Law Dictionary*, the meaning the term of 'bank fraud' is adopted from an American Legislation as,

¹ The Indian Penal Code, 1860, Section 25.

² Id., Section 24.

³ Id., Section 415.

⁴ Id., Section 463.

⁵ Derry v. Peek, (1889) 14 AC 337 : 5 TLR625.

“The criminal offense of knowingly executing or attempting to execute, a scheme or artifice to defraud a financial institution or to obtain property owned by or under the control of a financial institution, by means of false or fraudulent pretenses, representations, or promises.”⁶

Various authors on banking including even those who are writing books distinctively on the issue of Banking Frauds have not attempted to define Banking Fraud, rather have tried to give the broad outline of the Banking Frauds by enumerating different instances of frauds in banking sector.⁷

The term 'Banking Fraud' contains two elements namely 'Banking' and 'fraud'. Beginning with simple money-changing as per its the earliest traced history, the term 'banking' has today found synonymy with five core functions of accepting deposits, lending, investment, repayment and facilitating of withdrawal of money.⁴⁴ And in common parlance, 'fraud' is a dishonest act done with the intention of gaining benefit by causing loss to others. Legally speaking, 'fraud' refers to a false statement of fact by a person or his agent who himself doesn't believe the statement to be true, made with an intention of deceiving another party, and inducing him to enter into a contract on that basis.⁴⁵ Thus 'fraud' is a very 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 omission which is intended to cause wrongful gain to one person and/or wrongful loss to another.

Accordingly '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 customer, employee, outsider or by the bank itself, or by two or more of parties in connivance with each other. A common term to describe all such frauds is 'Banking Fraud'. Banking frauds may be committed by way of concealment, embezzlement, breach of trust, theft, cheating, forgery, falsification of accounts, conspiracy etc.

⁶ Supra Note 15 at pp. 140-141.

⁷ See generally, B.R. Sharma, *Bank Frauds, Prevention and Detection* (Universal Law Publishing Co., Delhi, 5th edn., 2009, Reprint 2012); R.P. Nainta, *Banking System, Frauds, and Legal Control* (Deep and Deep Publications, New Delhi, 1st edn., 2005); V.R. Solankar, *Banking Frauds in India*, (D.B. Taraporevala Sons & Co., Bombay, 1st edn., 1937).

1.2- RESEARCH METHODOLOGY

1.2.(1)- OBJECTIVES

1. To determine reason of various types of frauds in Banking.
2. To check different forms of fraud and their impact on different stakeholders.
3. To find out various measures to stop these fraud, so that to protect different stakeholders for that.
4. To trace out the various traditional as well as modern technological frauds prevailing in the banking system. .
5. To find out the relevancy and adequacy of Indian law on Banking Frauds.
6. To judge the impact of modern techniques and trends of business system in allowing or excluding Banking Frauds.
7. To find out the existing preventive and curative measures as are in place to address the menace of Banking Frauds.
8. To determine the desirability of a new comprehensive independent legislation to check Banking Frauds in India.
9. To make efforts to suggest positive steps to curb the menace of Banking Frauds which pose a legal challenge in 21st Century.

1.2.(3)- RESEARCH QUESTIONS

1. What is the meaning of fraud in banking sector?
2. What are reasons for committing frauds?
3. What are some measures to curb frauds?

2.1 - TYPES OF BANKING FRAUDS:

1. ACCOUNTING FRAUD:

To keep out of sight some financial transaction some businessmen or owner use fraud accounting statement to show sales and income which shows worthy company assets to show a state of profit but actually company is in the loss. Then these accounting statements are used by these companies to make fraudulent bank loan applications to gain money to stabilize the company. There are a variety of accounting frauds occurred in the world including Enron and

WorldCom and Ocala funding. The accounting frauds can be subdivided into Demand Draft (DD) Fraud, remotely created Cheque fraud etc.

2. CHEQUE KITTING:

It is also known as "Float" where the money is counted twice. When such Cheque is cleared and deposited in Mr A account the money gets credited immediately but at the same time money is not debited from Mr B account through which the Cheque is drawn. As a result, banks counted money twice because money is credited to one account but not debited from another account.

3. FORGED DOCUMENTS:

Forged Documents (Property documents, Letter of understanding) are used to get money illegally as a part of E| borrowed loans by an individual and bank will unable to recover money in future as the loan was approved on the basis of forged documents.

4. ALTERED CHEQUE:

This is the most common type of banking fraud where fraudsters change the name on the Cheque or amount of Cheque by simply putting extra 0 at the end. They also made an attempt to forge the signature of depositor on a blank Cheque and then print it on their own Cheque is drawn on the accounts owned by others and withdraws the money immediately even before the bank realize that the Cheque was a fraud.

SOME MAJOR BANK FRAUDS THAT SHOOK THE COUNTRY

PNB SCAM

- ❖ In 2018, the state-run lender PNB shocked the entire banking industry of India by revealing that it had been defrauded by Rs 11,400 crore allegedly by billionaire jeweller Nirav Modi, his family members and business partner Mehul Choksi, owner of the Gitanjali Gems at PNB's Brady House Branch in Mumbai. Following the scam, employees of PNB including people at the general manager level were suspended from their post for their suspected involvement in the biggest scam in the Indian banking sector. Also, the government has revoked passports of Nirav Modi and Mehul Choksi.

- ❖ After witnessing a scam of Rs 12,000 crore allegedly committed by Nirav Modi, the PNB has unearthed another 91 million fraud in March 2018. It involves officials of a little-known company called Chandri Paper and Allied Products Pvt Ltd. The fraud has been spotted at the PNB's Brady House Branch in Mumbai where the Nirav Modi scam had unfolded.
- ❖ The Punjab National Bank (PNB) in 2019 had reported another borrowing fraud of Rs 38.05 billion (\$556 million) in Bhushan Power & Steel Ltd.'s account to the Reserve Bank of India (RBI). The company has misappropriated bank funds, manipulated books of accounts to raise funds from consortium lender banks.

ROTOMAC CASE

- ❖ Rs 3,700 Rotomac fraud unearthed after the sensational PNB scam. Kanpur based Rotomac Global is being probed by the CBI and Enforcement Directorate (ED) for allegedly cheating a consortium of seven banks of Rs 3,700 crore. The investigation agency filed case against Vikram Kothari and Rahul Kothari, directors of the business group for misusing credit sanctions provided by Bank of Baroda (BoB), the member of consortium banks at its International Business Branch (IBB) at The Mall Kanpur to the tune of Rs 456.63 crore.

SBI FRAUD CASE

- ❖ State Bank of India (SBI) is at the forefront of a bank scam involving jewellery network Kanishk Gold Pvt Ltd (KGPL). The KGPL has been accused of defrauding a consortium of 14 banks amounting Rs 824.15 crore bank fraud led by the SBI. The Enforcement Directorate (ED) and CBI registered a case against Kanishk Gold.
- ❖ On 8th May, 2017, Nilesh Parekh, promoter of the Kolkata-based Shree Ganesh Jewellery House was arrested in connection with loss of Rs 2,223 crore to association of 25 banks led by the State Bank of India. The Accused was using the import finance from one bank and export finance from another bank so as to escape the recovery of import finance.

R P INFOSYSTEM SCAM

- ❖ In January the CBI has booked two directors of R P Info Systems and its directors for allegedly cheating a consortium of banks including PNB, SBI, and Canara bank to the

tune of Rs 515.15 crore. The banks alleged that loans were taken on the basis of fabricated documents.

KARNATAKA BANK FRAUD CASE

- ❖ Private sector lender Karnataka Bank on 28 March 2018 reported a fraud worth Rs 86.47 crore in the fund based working capital facilities extended to Gitanjali Gems Limited- the jewellery network which has been under the scanner in connection to the alleged involvement of the promoter Mehul Choksi in the mega banking scam.

UNITED BANK OF INDIA CASE

- ❖ On March first week the Central Bureau of Investigation (CBI) has filed a disproportionate assets (DA) case against Archana Bhargava, former chairperson and managing director of United Bank of India (UBI). The CBI alleges that Archana Bhargava acquired movable and immovable assets disproportionate to her income between 2004 and 2014.

ANDHRA BANK

- ❖ A former director of Andhra Bank and directors of Gujarat based pharma company Sterling Biotech were arrested on 13th Jan 2018 in Rs 5000 crore fraud case for withdrawing cash from the bank accounts of several benami companies. Company had taken loan of Rs 5000 crore from a consortium led by Andhra Bank. Later the loan turned into non-performing assets.

BANK OF MAHARASHTRA

- ❖ On 20th July 2017, CBI arrested the Former Head of Pune Zone of Maharashtra bank in Rs 836-crore fraud for violating laws for sanctioning amounts. The head had sanctioned credit facility to a logistic company on basis of forged documents and provided loan to 2,802 drivers for purchasing trucks.

CANARA BANK

- ❖ On 13th June, 2017, the promoters of a mining company Abhijeet Group were arrested for being defaulters in loans payment of over Rs 11,000-15,000 crore from 20 banks and financial institutions through 132 shell companies of the group. Abhijeet group

created vehicle company Jas Infrastructure to provide contract for erection, procurement and construction of a power plant at Bihar to its group company Abhijeet Projects and misusing loan amounts worth Rs 790 crore from Canara Bank and Vijaya Bank.

PREVENTIVE AND CURATIVE MEASURES VIS-A-VIS

TRADITIONAL AND MODERN AREAS OF FRAUDS

Traditional Areas of Fraud	Preventive/Curative Measures
Misappropriation and Criminal Breach of Trust	<ul style="list-style-type: none"> • Persons of doubtful integrity not to be posted in sensitive posts. • Regular scrutiny of staff accounts by Branch Manager at Branches and Branch Manager's account to be scrutinized by Zonal Managers. • Branch Manager to examine exception report daily which is generated at EOD without fail.
(a) Illegal/Irregular manipulation of records, documents, withdrawal of money etc.	<p>Cross-checking of transactions by staff other than the one effecting the transaction initially.</p> <ul style="list-style-type: none"> • Bank is having policy in place on User Id and password. • Careful and continuous monitoring of the work done in sensitive areas particularly deposits and advances.

<p>(b) Forgery of documents/vouchers/ records</p>	<p>Keeping under safe custody to avoid fraudulent manipulations.</p> <ul style="list-style-type: none"> • Inspecting officers to cross check at random, particularly records relating to large value transactions. • Loan documents taken ought to be vetted by Bank's lawyers-more so in case of equitable mortgage.
<p>(c) Falsification of financial documents</p>	<p>Reinforcements of instructions emanating from controlling offices regarding execution of documents and the same have to be put into practice. Instructions are to be carried out within laid down time frame and deviation must be followed up with appropriate action.</p> <ul style="list-style-type: none"> • Balancing of GL heads with that of subsidiaries in the CBS environment is a must. A printout to be taken out from the system and to be checked and verified.

<p>2(d) Fraudulent encashment through forged instrument coloured Xeroxed/ scanned cheques</p>	<p>Check MICR code/ISFC code printed on the cheque for its correctness.</p> <ul style="list-style-type: none"> • Scrutinize quality of the printing/ paper which is inferior before making payment. • Scrutinize carefully to detect any change in the colour on the face/back of the cheque presented for payment. • All high value cheques received in inward clearing/ speed clearing/ payment must be checked by Ultra Violet Lamp before making payment. • In case of any doubt, immediately contact the issuing branch/ customer to verify the genuineness of the instructions.
<p>2(e) Forgery in Demand Drafts and Issuance of Fake Drafts</p>	<p>All Demand Draft leaves should invariably be kept under proper custody and use of the same must be accounted for each day.</p> <ul style="list-style-type: none"> • At the time of making payment, each Draft leaf must be examined carefully to notice that it has: • Printed number containing six digits. • The correct Code Number of our Bank and Draft Transaction Number i.e. 16. • Water mark is present on the Draft leaf in the form of our Bank's logo, which should be visible if hold against light. • Name of issuing Branch with correct Code No. is mentioned on the Draft.

	<ul style="list-style-type: none"> • Correct name and Code No. of the branch on which the Demand Draft is drawn has to be checked. • The texture/paper quality of computer generated Draft leaf has to be examined to ascertain its genuineness. • Colour of the Draft must be identical with that of the genuine Draft of our Bank. • The signatures appearing on the Demand Draft must be carefully verified from the Specimen Signature Book available with the branches before payment made for the Demand Drafts. Greatest attention should be given to the identification number of the signatories on the Draft. • When instance of fake/ forged draft comes to notice, the incident is circulated among all branches/ offices to exercise caution for obviating recurrence of such incidence. • Master List of all previous notified stolen/fake security documents to be maintained at branch level. • There should not be any material alteration in the amount written both in words and figures in the Demand Draft.
<p>2(f) Dividend Warrants/Interest Warrants/ Refund Payment</p>	<ul style="list-style-type: none"> • Reference should always be made to the circulars issued regarding payment of Dividend Warrants. If a • particular branch is not designated as the Paying Branch, but the Dividend Warrant is presented for payment, the same should be declined and the matter referred to the controlling office.

	<ul style="list-style-type: none"> • The colour of the instrument presented for payment must be carefully compared, whenever necessary, with the specimen of the instrument circulated among branches designated for payment. • The instrument itself should be carefully scrutinized to find out whether the number mentioned therein tallies with the number as communicated through circulars for payment of Dividend Warrants. Special attention should be given to the Control Number of such instruments. • Sometimes the upper limits of the amount are fixed for payment of Dividend Warrants and hence, while making payments, it should be ensured that the warrant being paid is not of an amount exceeding the limit. • The signatures on the Dividend Warrants must be carefully compared with the signatures circulated among the Paying Branches and it should be ensured that no Dividend Warrant with a different signature is paid.
<p>2(g) Acceptance of National Savings Certificates as security</p>	<p>At the time of accepting National Saving Certificate (NSC) as securities for disbursing credit facilities, the following aspects are to be carefully examined.</p> <ul style="list-style-type: none"> • The NSC to be examined carefully to ensure that it is genuine and not spurious one. • There should not be any overwriting/cancellation without authentication. • NSC should be sent to the Issuing Post Office for Registration and lien marking.

	<ul style="list-style-type: none"> • In no case the NSC should be handed over to the prospective borrower for getting lien marked/pledged by the concerned Post Office, but some authorized persons from the Branch should approach the Post Office for this purpose. • While effecting encashment of NSC for adjustment of loan, the same should be sent to Post Office through an authorized person of the Branch and payment obtained directly. • NSCs offered as security are to be kept always under proper custody and no unauthorized access be allowed to the same.
<p>Unauthorized credit facilities extended for reward or for illegal gratification</p>	<ul style="list-style-type: none"> • Inspection reports raised on branches must be meaningfully analyzed at controlling offices and any lacunae pointed out therein should be taken up with the concerned branch for removal of such shortcoming infirmities within the definite time frame. • Controlling offices must monitor and analyse various statements sent to them relating to credits disbursed and deviation noticed are to be rectified within reasonable time, keeping close watch on the procedures undertaken for rectification.
<p>Negligence and Cash Shortages</p>	<p>Cash Keys are to be kept under dual custody. Movement of keys to be properly recorded.</p> <ul style="list-style-type: none"> • Cash safes to be operated always by both custodians together. • No unauthorized persons to be allowed in cash strong room and cash department enclosures.

	<ul style="list-style-type: none"> • Physical verification of cash to be invariably undertaken each day after the close of business hours.
<p>5(a) Cheating and Forgery (a) Fake Title Deeds in Mortgage Loan</p>	<p>Strict adherence to Bank's guidelines/policies/systems and procedure in this regard.</p> <ul style="list-style-type: none"> • Due diligence on builder/seller/borrower • Due diligence of property independent of borrowers/ lawyer Title Deeds are to be verified carefully so as to prima facie establish the genuineness of the same. • "No Objection" Certificate and other documents issued by builders and housing societies must be carefully examined about their genuineness. • Pre and Post Sanction verification by two different officers. • Sites of properties offered as securities must be visited to ensure its existence before loans are sanctioned/ disbursed. • Valuation of the property offered as security must be conducted by Registered/Empanelled valuers. • Valuation by officers independent of valuer also to be done. • It has to be ensured that the Title Deeds offered as security for a particular credit facility availed is free from encumbrance. • Search certificate for minimum twelve years should be obtained from the empanelled Advocate of the Bank. The date of the certificate should tally with the actual date on which the search was conducted from Search Receipt.

	<ul style="list-style-type: none"> • Certified copy of the title deed should be obtained from the Sub Registrar's office and compared with the original one submitted by the borrower as per Circulars. • Valuation report must be obtained as per latest format and guidelines of the bank issued under Circulars. • An independent valuation must be done by the branch officials to rule out overvaluation,
<p>5(b) Gold/Jewels offered as security</p>	<p>Licensed Assessor's certificate must be obtained regarding: Purity of the gold/ ornaments/ jewellery;</p> <ul style="list-style-type: none"> • Correctness of the weight of the gold/ ornaments/ jewellery; • Assessing the market value of the gold/ornaments/jewellery offered as security • Keeping the gold/ornament/jewellery under proper safe custody strictly as per extent guidelines of the bank.
<p>5(c) Impersonation</p>	<p>The principle of 'Know Your Customer' must be followed carefully</p> <ul style="list-style-type: none"> • Identification of individual/corporate opening an account so as to establish true identify/bona fides. • Establishing identity of the customer by verifying passport, driving license etc. for individuals and Memorandum of Association, Articles of Association etc. for corporate bodies. • Proper introduction of the account.

	<ul style="list-style-type: none"> • Verifying information given by the customer himself. • New account-holders are sent letters of thanks by Post for opening accounts 85 requesting them to bring the envelope to Bank • Monitoring high value remittance • Remittances of amount of Rs. 50,000/- and above to be made by debit to customer's accounts or against cheques and not against each. • Applicants for remitting amount exceeding Rs. 10,000/- may provide PAN (Income Tax).
<p>5(e) Unusual activities/ transactions</p>	<ul style="list-style-type: none"> • Proper monitoring of transactions are to be carefully undertaken in the following cases: • Frequent, large cash transactions. • Multiple accounts being operated under the same name • Frequent conversion of large amounts of currency from small to large denomination notes. • Placing funds in term deposits and using them as security for more loans. • Large deposits immediately made following wire transfers. • Sudden surge in activity level. • Same funds being moved repeatedly among several accounts. • Multiple deposits of money orders. Banker's cheques, drafts of third party. • Transactions inconsistent with the purpose of the account. • Low or overdrawn balance with high activity.

<p>5(f) Fake Bank Guarantee</p>	<p>Issuing branch to send a copy of BG to the beneficiary requesting him to check up the terms and conditions of the bank guarantee.</p> <ul style="list-style-type: none"> • Branch to send their confirmation to the controlling office which shall exercise proper control against fraudulent issuance of the BGs.
<p>5(g) False letter of credit submission</p>	<p>Confirmation to be called for from issuing Bank immediately on submission of Letter of Credit by the party.</p> <ul style="list-style-type: none"> • Thorough scrutiny of the letter of credit to detect any onerous clause. • Evaluating the terms/conditions to verify their practical enforceability or otherwise. • Lie not to be opened for those who do not enjoy credit facilities. • The customers' ability to retie bills under L/C has to be considered and ensured.

PREVENTIVE AND CURATIVE MEASURES VIS-À-VIS MODERN AREAS OF FRAUDS

21 St Century has witnessed a tremendous change in almost all the walks of life. Technology has promised unprecedented development to the mankind and provided computerization as a fountain of new age wisdom and delivered a flood of new quick and efficient banking services. But this facility also created risks in various banking activities which need well defined and timely precautionary measures. Computer automation providing innumerable services are subject to certain security/precautionary measures against its inbuilt flaws and RBI to explaining the activities suggests the preventive vigilance steps to be taken to minimize such risks.

The precautions to be adopted to avoid/minimize occurrence of computer related frauds involve to a large extent in moulding attitudes of the persons engaged in computer fields attitudes needing thorough overhaul are outlined below:

- A) Easy to get away and cannot get caught.
- B) Stealing a little from big company would not hurt.
- C) Everybody else is stealing, why not me.
- D) Computer security is not a priority.
- E) Computer will take care of everything-no checking is required.
- F) Lack of input control - output verification.
- G) Lack of evidence.
- H) Lack of access control-audit trails.
- I) Lack of dual checks in sensitive and high-value transactions.
- J) Long serving trusted operators/supervisors/Managers.
- K) Missing EDP audit.

PREVENTIVE AND CURATIVE MEASURES VIS-À-VIS METHODS OF COMPUTER FRAUDS

Some of the methods adopted for perpetration of computer frauds either by using computer systems or against usage of computers are listed below along with the explaining activities and the preventive vigilance steps to be taken to minimise such risks:

Method of Computer Frauds/Crime	Activity	Preventive Vigilance
Data Diddling	Changing the input or output unauthorisedly to conceal or give erroneous output affecting the data integrity	Assigning proper users IDs/authentication
Trojan Horse	Unauthorized but innocent looking instructions imbedded to the	Source code review of outputs - to data analysis

	programmes to activate and destroy data at a pre-determined date.	
Salami Technique	Theft of small amounts not drawing attention of authority in a big way.	End value/abnormal value null value analysis
Super Zapping	Data over-write or erasing the data base through a programme without leaving trace	Physical and logical access controls to be invoked.
Trap Doors	Undocumented entry pontes in the programs switching over to activities not intended to under the prescribed rules	Program review and computer audit
Scavenging	Left over information or unattended floppies or unused floppies having sensitive information used for fraudulent activities	Unused information to be shredded/unused floppies to be erased before reuse
Data Leakage	Disclosing the information through covert means	Strong data safety methods-access controls
Simulation and modeling	Using a back-up computer for entering fictitious records	Strong back - up procedures and doormented off-site back-up procedures to be ensured.

Moreover, the fraud risk management is not only required to manage the traditional fraud, but it is also found imperative to find solution and preventive measures in case of e-frauds. With the implementation of Core Banking Solutions, the data related to customers and the transactions gets centralized at Data Centre. Customer of the Branch becomes the customer of the Bank. Bank identifies a customer with on unique customer Id. While CBS has offered a host of convenient services for customers, it has also opened floodgates for unscrupulous activities. Bank is having well laid down CBS policy to take care of needs of the maintenance and safety of the system.

DIRECTIVES BY THE RESERVE BANK OF INDIA REGARDING REPORTING OF BANKING FRAUDS

There is a regulatory requirement to report every fraud within 21 days of its detection to the RBI. As per the RBI instructions, the information must be complied properly and disseminated to the Bank's head office, so that the same may be circulated to all its branch offices. The circular further reported that Zonal Heads shall continue to declare any account/incident as fraud whenever an element of fraud is discernible and report it to Head Office, Vigilance Department within 7 (seven) days from the date of detection of fraud in respect of any branch/office under their control or other branches/offices such as MCU/FCC/Processing Centres within their operational area. Subsequently, Vigilance Department shall place a brief account of frauds by way of a 'Note to ED/CMD' for their information and direction and thereafter it would be reported to RBI and Board of Directors of the Bank.⁸

Moreover, the ABC Bank Policy on fraud, 2010 duly circulated by ABC Bank, emphasizes that the zonal heads have to ensure that the complaints are lodged in all cases of frauds promptly, without undue delay as per the guidelines issued by the Vigilance departments from time to time as per the directions of the RBI.

The ABC Bank's policy further depicts that in some of the fraud cases it has been observed that Complaints were not properly drafted which defeated the whole purpose of the exercise. In order to bring uniformity in this matter. Branches must send draft copy of the complaints in all cases of frauds to concerned Zonal Office along with relevant papers for vetting of the complaints. Zonal office has to vet all complaints above Rs. 10,000/- but below Rs. 100.00 lac without any exception before it grants permission to the branch for filling of Complaint with

⁸ Supra Note 5, p.9.

Police Authorities. Head Office, Vigilance Department will continue with the practice of vetting all complaints over Rs. 100.00 lac. It is very important to appreciate the reason behind the filing of cases with CBI/Police Authorities immediately as under:

- It leads to arrest of the culprits in most of the cases;
- It helps bank in recovery of the defrauded amount.
- In this situation, fraudsters are unable to repeat similar frauds at other branches/banks.
- It sends a strong message to potential fraudsters (both internal and external) and this act as a deterrent.⁹

CONCLUSION

As definitions have a role and power of determining the ambit and effect of an offence, defining what constitutes a Banking Fraud is fundamentally important. And care must be taken while defining Banking Frauds to keep the definition comprehensive enough to cover both the conventional and new age Banking Frauds as are emerging and as may emerge in times to come. Thus, the task of defining 'Banking Frauds' must be assigned to an expert committee.

- While recognizing Banking Frauds as a distinct offence, care must be taken to clearly define it as a socio-economic offence so that the benefits of plea-bargaining under Chapter XXIA of the Code of Criminal Procedure, 1973 may not be extended to the perpetrators of the offence of Banking Frauds.
- The development of banking over the years has highlighted the point that banking institutions are fast venturing into other commercial activities like insurance, securities dealing etc. Same is the case with other commercial entities. The recent RBI move to issue licences to new private banks and the surge of applications for these licences by different established commercial business houses make it evident that the line of distinction between banking and other economic activities is vanishing very fast. This may help in quicker economic growth, but at the same time, taking up an apprehensive view from the point of issue of Banking Frauds, a consequential effect of such jumbling of banking and other commercial activities can be that every financial fraud taking place in such entities will be looked at as a Banking Fraud.

⁹ The RBI Master Circular on 'Frauds-Classification and Reporting', dated July 02, 2012.

The time immemorial adage that prevention is better than cure holds good with respect to the issue of Banking Frauds as well.

- Investigation lays down the basis for conviction in any offence. Same is the case with the crime of Banking Frauds. Thus, the role of investigation as well as investigative agencies remains very important in creating a fraud proof banking environment.

The justice delivery system creates the mechanism of enforcement of law. In a structure following the court-system, numerous factors govern the utility and efficacy of substantive law in addressing a particular concern. In the established court system presently existing in India, a few changes will go a far way in effectively curbing the menace of Banking Fraud.

From the procedural perspective, to ensure quick disposal of Banking Frauds' cases, Summary Trial in cases of Banking Frauds (up to a certain limit) in place of regular trials will prove time-saving and effective as the possibility of recovery of money lost due to a Banking Fraud diminishes with passage of time. In the same manner shifting burden of proof on the accused in economic offences may also prove helpful in ensuring an effective trial. Clarity on jurisdictional issue of different domestic courts is also desired for avoiding delay in trial due to jurisdictional dispute.

- As the ultimate economic loss in case of every Banking Fraud trickles down to the customer who is the consumer of banking services, there is a dire need to further develop the consumer rights' perspective on the issue of Banking Frauds. Because even if a bank fails due to a financial scam, its customers carry the risk of losing their hard-earned money kept with the bank. Thus, the bank's customer should not be looked at just a party to contract of banking service, but also as a consumer of banking service, as he is the person at the centre of all banking activities and for whom the entire banking system exists.

In 21st Century, the numerous challenges faced by the banks have necessitated to re-evaluate the legal strategies and processes in order to remain active in the dynamic environment. An analytical perusal strongly reveals that the banking system, thus, is facing challenges from the developments taking place in society and from the revolution brought about by neo-scientific technology. The 19th Century laws meekly supported by the 21st Century piecemeal legislations are incapable of holding the guard against the constant attack of Banking Frauds.