

# Legal Aspects of Internet Banking in India

Divya.K

Asst Prof., School of Excellence in Law  
Tamilnadu, India

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## ABSTRACT:

Indian banking system can go cashless with the aid of Internet banking. Internet banking is also known as e-banking or online banking or virtual banking. It is an electronic payment system that enables customers of a bank or other financial institutions to conduct a range of financial transactions through the financial institutions websites. There are different types of online financial transactions famously called as core banking such as Nation Electronic Fund Transfer (NEFT), Real time gross settlement (RTGS), Electronic clearing system (ECS), Immediate Payment Service (IMPS), Automated teller machine, Smart cards, Tele banking etc. Through Internet banking we can check our transactions at any time of the day and as many times as want to. The online banking frauds in India have increased tremendously. In India there are no sufficient Internet banking laws but the Reserve bank of India has issued some guidelines at the latest in this regard though it is not sufficient to make the banks follow robust and required cyber security procedures. The paper highlights the new trends in the Internet banking addressing the cyber issues, its advantages and disadvantages with special reference to legal framework that is prevalent in India to protect the customer against the menace of it.

*Keywords: Internet Banking, Core banking, Technology, Cyber security, Legal issues*

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## I. INTRODUCTION

***“India has seen a dream of Digital India. From latest science to latest technology, everything should be available at the tip of one's finger.”***

**-Narendra Modi**

Banking system always has an important role to play in every country's economy. It is vital for any nation as it provides for the needs of credit for all the sections of the society. The growth potential of India is based on its strong banking institution. The infusion of information technology in banking sector has completely revolutionized how the banking sector operated. In order to survive in the new globalized world, banks had to opt for this new change. Today most of the banking happens while you are sipping coffee or taking an important call. ATMs are at your doorstep. Banking services are accessible 24x7. There are more plastic cards in your wallet than currency notes. A huge part of this change is due to advent of IT<sup>1</sup>. Banks today operate in a highly globalized, liberalized, privatized and a competitive environment.

## II. INTERNET BANKING

According to Daniel “Internet banking or E-banking is the term that signifies and encompasses the entire sphere of technology initiatives that have taken place in the banking industry. E-banking is a generic term making use of electronic channels through telephone, mobile phones, internet etc. for delivery of banking services and

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<sup>1</sup> Information technology (IT) is the use of computers to store, retrieve, transmit, and manipulate data, or information, often in the context of a business or other enterprise.

products. Internet banking as the delivery of bank's information and services by banks to customers via different delivery platforms that can be used with different terminal devices such as a personal computer and a mobile phone with browser or desktop software, telephone or digital television”.

Internet banking is defined by **Barron’s Dictionary (2006)** as “A form of banking where funds are transferred through an exchange of electronic signals between financial institutions, rather than an exchange of cash, checks, or other negotiable instruments”.

### **III. INTERNET BANKING VERSUS TRADITIONAL BANKING**

Many years ago, under the system of traditional banking when a user wanted to open a bank account, he or she must be present at the branches of the bank. Traditional banking offers people to people interaction. Fixed schedule, inconvenient locations and limited financial products offer are some of the drawbacks of traditional banks. For internet banking, the easiest way to open a saving account is by linking to an existing account. Business transactions can be carrying out by just a “click”. Without any verbal communications and no long queue at the counter, the users still can manage any accounts by staying at home. Internet banking is more convenient and offers 24 hours in 7 days of banking service and more flexibility as contrasted with that of Internet banking.

### **IV. ONLINE BANKING USERS IN INDIA TO REACH 150 MILLION BY 2020<sup>2</sup>**

With the ongoing digital drive in India, the number of users opting for online banking is expected to double to reach 150 million mark by 2020, from the current 45 million active urban online banking users in India, according to a report drafted by Facebook and The Boston Consulting Group (BCG). In a report, titled “**ENCASHING ON DIGITAL:**

**Financial Services in 2020**” the two firms have highlighted the rising influence of digital in financial services and the transformation required to make the most of this revolution. “India could not be more ready for a digital revolution in financial services – with government interventions on one hand and growing consumer awareness on the other.

### **V. FEATURES OF INTERNET BANKING**

The main features of e-banking are as follows<sup>3</sup>

1. Banking functions are carried by using internet facility.

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<sup>2</sup> <https://www.financialexpress.com/industry/banking-finance/online-banking-users-in-india-to-reach-150-billion-by-2020-according-to-a-study/7310>

<sup>3</sup> <http://www.journalcra.com/sites/default/files/issue-pdf/Download%204298.pdf>

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

## **VI. ADVANTAGES OF INTERNET BANKING:**<sup>4</sup>

1. **Convenience:** This is the single most important benefits that outweigh any shortcoming of internet banking. Making transactions and payments right from the comfort of home or office at the click of a button without even having to step out is a facility none would like to forego. Keeping a track of accounts through the internet is much faster and convenient as compared to going to the bank for the same. Even non transactional facilities like ordering cheque books online, updating accounts, enquiring about interest rates of various financial products etc become much simpler on the internet.

2. **Better Rates:** The banks stand to gain significantly by the use of internet banking as it implies lesser physical effort from their end. The need to acquire larger spaces for offices and employ more staff to deal with the customers is significantly reduced making it financially beneficial to the banks. This means that a portion of savings accrued can be passed on to the customers in terms of higher rates on deposits and lower rates on loans. To encourage internet banking most banks offer minimum or no deposit accounts for online banking and lower penalties on early withdrawal of Fixed Deposits.

3. **Services:** Technology has made it extremely convenient for the bank as well as the customer to access to a host of wonderful services by simply logging in. These services include financial planning capabilities, functional budgeting and forecasting tools, loan calculators, investment analysis tools and equity trading platforms which are available as simple applications on the bank's website. Additionally most banks also provide the facility of online tax forms and tax preparation.

4. **Mobility:** Internet banking has a step further in the last few years in the form of mobile internet banking which accords unlimited mobility to the customer who can now handle financial transactions even while on the

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<sup>4</sup> <https://www.reuters.com/article/benefits-and-drawbacks-of-internet-banki/benefits-and-drawbacks-of-internet-banking-idINDEE87106320120802>

move.

5. **Environment friendly:** Another important benefit of the concept of internet banking is that it is good for the environment as it cuts down the usage of paper, reduces pollution as people do not have to travel physically and also does not add emissions. However the current trend of exclusively using the online mode to make all kinds of transactions has a few pitfalls which may prove costly in the long run unless guarded against from the beginning.

## VII. DISADVANTAGES OF INTERNET BANKING

1. **Relationships:** Online transactions take a toll on the relationship with the banker which the traditional visit to the branch office used to foster. Personal relationship with the staff at the banks comes handy when requesting for faster loan approval or a special service which may not be available to the public. The manager has many discretionary powers such as waiving of penal interest or service fees which were often taken advantage of by better acquaintance with the staff. Additionally personal contact also meant that the banker would provide essential financial advice and insights which are beneficial to the customer.

2. **Complex Transactions:** There are many complex transactions which cannot be sorted out unless there is a face to face discussion with the manager that is not possible through internet banking. Solving specific issues and complaints requires physical visit to the bank and cannot be achieved through the internet. Online communication is neither clear nor pin pointed to help resolve many complex service issues. Certain services such as the notarization and bank signature guarantee cannot be accomplished online.

3. **Security:** This is the biggest pitfall of the internet banking scheme which needs to be guarded against by the common customer. Despite the host of sophisticated encryption software is designed to protect your account there is always a scope of hacking by smart elements in the cyber world. Hacker attacks, phishing<sup>5</sup>, malware and other unauthorized activity are not uncommon on the net. Identity theft is yet another area of grave concern for those who rely exclusively on internet banking. Most banks have made it mandatory to display scanned copies of cleared checks online to prevent identity theft. It is essential to check bank's security policies and protections while opening an account and commencing the usage of online banking facilities.

4. **The Trust Factor:** Trust is the biggest hurdle to online banking for most of the customers. Conventional banking is preferred by the customers because of lack of trust on the online security. They have a perception that online transaction is risky due to which frauds can take place. While using e-banking facilities lot of questions arises in the mind of customers such as: Did transaction go through? Did I push the transfer

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<sup>5</sup> The fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers.

button once or twice? Trust is one among the significant factors which influence the customer's willingness to engage in a transaction with web merchants

**5. Customer Awareness:** Awareness among consumers about the e-banking facilities and procedures is still at lower side in Indian scenario. Banks are not able to disseminate proper information about the use, benefits and facility of internet banking. Less awareness of new technologies and their benefits is among one of the most ranked barrier in the development of e-banking<sup>6</sup>.

## VIII. KINDS OF INTERNET BANKING:

**1 National Electronic Fund Transfer (NEFT):** National Electronic Funds Transfer (NEFT) is a nation-wide payment system facilitating one-to-one funds transfer. Under this Scheme, individuals, firms and corporate can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme. Individuals, firms or corporates maintaining accounts with a bank branch can transfer funds using NEFT. Even such individuals who do not have a bank account (walk-in customers) can also deposit cash at the NEFT-enabled branches with instructions to transfer funds using NEFT. However, such cash remittances will be restricted to a maximum of Rs.50,000/- per transaction. NEFT, thus, facilitates originators or remitters to initiate funds transfer transactions even without having a bank account. Presently, NEFT operates in hourly batches - there are twelve settlements from 8 am to 7 pm on week days (Monday through Friday) and six settlements from 8 am to 1 pm on Saturdays.

**2 Real Time Gross Settlement (RTGS):**RTGS is defined as the continuous (real-time) settlement of funds transfers individually on an order by order basis (without netting). 'Real Time' means the processing of instructions at the time they are received rather than at some later time; 'Gross Settlement' means the settlement of funds transfer instructions occurs individually (on an instruction by instruction basis). Considering that the funds settlement takes place in the books of the Reserve Bank of India, the payments are final and irrevocable<sup>7</sup>. The RTGS system is primarily meant for large value transactions. The minimum amount to be remitted through RTGS is 2 lakh. There is no upper ceiling for RTGS transactions. The RTGS service for customer's transactions is available to banks from 9.00 hours to 16.30 hours on week days and from 9.00 hours to 14:00 hours on Saturdays for settlement at the RBI end. However, the timings that the banks follow may vary depending on the customer timings of the bank branches.

**3 Electronic Clearing System (ECS):**ECS is an alternative method for effecting payment transactions in respect of the utility-bill-payments such as telephone bills, electricity bills, insurance premium, card payments

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<sup>6</sup> Law of Torts With Consumer Protection Act- RK Bangia-Pg.no.41

<sup>7</sup> <https://www.icicibank.com › onlineservice › online-services › FundsTransfer>

and loan repayments, etc., which would obviate the need for issuing and handling paper instruments and thereby facilitate improved customer service by banks / companies / corporations / government departments, etc., collecting / receiving the payments.

**4 Immediate Payment Service (IMPS):** IMPS offers an instant, 24X7, interbank electronic fund transfer service through mobile phones. IMPS is an emphatic tool to transfer money instantly within banks across India through mobile, internet and ATM which is not only safe but also economical both in financial and non-financial perspectives.

## **IX. LEGAL ISSUES IN INTERNET BANKING IN INDIA:**

India is a signatory of WTO. The basic principles of WTO are Liberalization, Globalization and Privatization. Therefore, trade and commerce in India has been liberalized. Incidentally, the financial sector has also undergone major changes. With the advent of e-banking, India is facing unprecedented competition from the World at large. If technology is not updated in financial sector, international trade would be a distant dream<sup>8</sup>. The deregulation of the banking industry coupled with the emergence of new technologies has enabled new competitors to enter the financial services market quickly and efficiently. Various provisions of law, which are applicable to traditional banking activity, are also applicable to internet banking. This does not overcome the problems, and therefore there is need for introduction more stringent rules and laws specifically to meet the problems of e-banking. The legal framework for banking in India is provided by a set of enactments, viz.

- The Banking Regulation Act 1949,
- The Reserve Bank of India Act 1934 and
- The Foreign Exchange Management Act 1999
- The Information Technology Act 2002
- The Consumer Protection Act 1986
- The Indian Contract Act, 1872
- The Negotiable Instruments Act, 1881
- The Indian Evidence Act 1872

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<sup>8</sup> <http://jsslawcollege.in/wp-content/uploads/2013/05/LAW-RELATING-TO-E-BANKING-IN-INDIA---AN-OUTREACH-CHALLENGE.pdf>

## X. HOW TO TAKE LEGAL ACTION IN CASE OF SMART CARD FRAUD?

The moment a person come to know that a suspicious transaction has been done on his or her credit/debit card, has to inform the card issuer immediately. One should lodge a formal complaint with the bank and ideally call up the customer care number to block the card or the account immediately.

### How to file a complaint?

If the fraud is related to net banking, ATM transactions, or any other online transaction happens, the person have to raise a complaint. But, before filing a written complaint with the bank or the card issuer, the person has to make sure that he or she has at least these following documents

- Bank statement of the last six months of the concerned bank
- A copy of SMSs received related to the alleged transactions
- A copy of your ID proof and address proof as shown in the bank records
- A complaint lodged in the nearest police station explaining the complete incidence along with the above said documents

There are several fake apps being floating around in the cyber world. In case of any financial fraud committed through an app, in addition to the above mentioned documents, also have to furnish the screenshot of the malicious app and the location from where it was downloaded.

### Where to file the complaint?

Once the card issuer or the bank has been informed about the fraudulent transaction, one should file a written compliant with the nearest police station. "An FIR<sup>9</sup> has to be filed in the local police station only. In case police refuses to file an FIR, the court can be approached under section 156(3) of the CrPC<sup>10</sup>. But, what if the police asks to go to the Cyber Cell to file the complaint? The concerned person need to approach the cyber cell. He can file an FIR in the local police station itself. The cases are forwarded by the police stations to the Cyber Cell. In case the person wishes to lodge a complaint directly with the cyber cell, even after having lodged a complaint with the police, can do so. The contact details of such district cyber cell specific to the peron's place of residence can be found on the Internet<sup>11</sup>.

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<sup>9</sup> First Information Report (FIR) The first information report means an information recorded by a police officer on duty given either by the aggrieved person or any other person to the commission of an alleged offence

<sup>10</sup> Criminal Procedure Code 1973

<sup>11</sup> <https://economictimes.indiatimes.com/wealth/spend/how-to-report-a-net-banking-debit-or-credit-card-fraud/articleshow/66967421.cms?from=mdr>

## XI. LIABILITY IN CASE OF FRAUDULENT TRANSACTION:

Now, if the fraud happens and the bank is not at fault and it was committed by a third-party through an act of scamming, phishing etc, the RBI rules says that the customer is not required to pay if the breach has been reported within three days of the fraudulent transaction. A transaction reported after that but within seven days, the per transaction liability of the customer will be limited to the transaction value or an amount set by the Central Bank whichever is lower. And, if you take more than seven days, "the customer liability shall be determined as per the bank's Board approved policy," says the RBI notification. Having informed the bank, as per the RBI rules<sup>12</sup>, the resolution has to be over within 90 days. Banks have to credit or reverse the unauthorised electronic transaction to the customer's account within 10 working days from the date of notification by the customer.

## XII. SUGGESTIONS

1. Banks are under obligation to maintain secrecy of customers account<sup>13</sup>. The RBI new circular has given guidelines to minimize risk of hacking. However, it is the duty on the banker to adopt technology to discharge his duty in a more effective manner. Reserve Bank of India should also ensure that the banks are using new technology. The RBI should appoint technicians and ask them to report the same under security policy.
2. The auditor appointed to inform as the misappropriation of funds even at the minutest level<sup>14</sup>. Electronic banking has enhanced the risk of misappropriation of funds by the bankers as it goes undetected.
3. The Automatic Teller Machine fails frequently and causes inconvenience to the customer. RBI in its next circular has to mention the number of times banks are not penalized for such failures. After a particular limit the banks should pay penalty which alerts them to keep check on the working of the machine.
4. Speedier and cheaper justice is the hallmark of the Consumer Protection Act. And as discussed above the Act is application to banking service also. The scope of the Act should be extended specifically to electronic banking also in cases of frequent failure of ATM machines, non compliance of security which results in hacking, and exuberant charges levied by bank for fund transfer, etc. Though this are covered under RBI circular, they should be brought within the purview of the legislation, which will be convenient to customers.

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<sup>12</sup> [https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=39450](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39450)

<sup>13</sup> <http://www.banknetindia.com/banking/ibkg.html> retrieved on 21/02/2011

<sup>14</sup> Section 35 of RBI Act 1935

### **XIII. CONCLUSION**

Customers of Indian banks are still reluctant in adopting electronic banking. Understanding the reasons for this resistance would be useful for bank managers in formulating strategies aimed at increasing online banking use. Crime based on electronic offences are bound to increase and the law makers have to go the extra mile compared to the fraudsters, to keep them at bay. Technology is always a double-edged sword and can be used for both the purposes, good or bad. Preamble of the IT Act 2000 provides that the Act was passed with the objective to give legal recognition for transactions carried out by means of electronic data interchange and other means of e-commerce. Further the Act has also made amendments to the IPC 1860, Indian Evidence Act 1872, The Bankers Books of Evidence Act 1891, and the Reserve Bank of India Act 1934 for facilitating legal recognition and regulation of the commercial activities. Though this objective of the Act is not to suppress the commercial activity, but has defined certain offences and penalties to smother such omissions, which is understood to come within the characterization of cyber crimes. For customers security is still a big concern for usage of e-banking services which the present legislation is inadequate to deal with. The challenges ahead to the court of law to apply the provisions have been difficult due to lack of clarity. The legal issues of Internet banking in India must be taken more seriously by all stakeholders especially the Indian banks. However, better results cannot be achieved till cyber security requirements made mandatory on the part of Indian banks.

**Cashless India is the future India!**