

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 5

2022

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Pandemic and Online Financial Frauds

Regulatory Issues and challenges

AJAY KUMAR GOEL¹

ABSTRACT

Various types of online frauds are going on as their prevailing practice, however, during Pandemic, a new type of fraud has been started which is going on with the help of loan apps. The trend of using loan apps has been started during the period when people are supposed to stay at home during pandemics due to fear in the society of any unfortunate happening in life, which created a situation of financial crunch. The started trend looks promising but it turns out to be frustrating for customers who later on lodge various types of complaints including criminal complaints in a compelling situation of unethical practices, against the money lenders who are providing loans through these apps. It has been seen that investigation agencies too found it difficult sometimes, to handle such types of new complaints due to their sudden emergence and lack of any specific law in the area. Therefore, the researcher will limit and find the scope of discussion of the article in the area of online financial Fraud through loan apps only. The Researcher will go through the legal provisions available in the Indian scenario i.e. RBI guidelines, Information Technology Act Regulations, etc. after knowing how such types of activities are going on between lender and borrower and what types of legal provisions are violated. The paper wants to evaluate legal issues and challenges that this pandemic is putting forward with regard to financial crime.

I. INTRODUCTION

Since the process of globalization has been started in India from 1990 and the role of Information Technology and Communication is increasing day by day, the scope of various activities (either social or financial) in the life of every individual citizen, are getting affected due to increasing dependency on the technology. With the growth of Information & Technology, the nature of services in the financial sector is also changing at a rapid speed. Whether we discuss Business transactions or other financial services, we can see the big role of technology through online transactions which has made life much more convenient in comparison to the traditional system of financial dealing. Such convenience has also become a necessity during the time of the pandemic, when people are advised to ensure social distancing.

¹ Author is a Research Scholar at USLLS, GGSIP University, New Delhi, India.

In our day to day life we are using e-wallets like paytm, Credit/ Debit Cards, online banking etc. for doing any financial transaction for the purpose of personal & official dealing as per the requirement of time. Definitely it has benefitted each and every person involved in the process either through money value or by the time value due to saving of a lot of time & manpower, but, this facility has also created various types of other dangers. It is true that this development has helped in ease of life but it has also raised many concerns about security issues from cyber criminals in the virtual world for our country too. Small negligence during online dealing in virtual space through the internet can cause exposure of privacy and other financial details to the third person, who may be a Cyber Criminal. In the management lessons we have read about SWOT Analysis (Strength, Weakness, Opportunity & Threat) and if we analyze the online facility, we will find that the online transactions are strengths as well as weaknesses for both either it is the true persons who are doing transactions or the Cyber Criminals. It is a fact that Cyber Criminals are always one step ahead of the security system of any country, thus, the time of pandemic has created more opportunities for Cyber Criminals and more threatful to internet users².

There are various kinds of online financial & social frauds, which are going on as per their prevailing practice. Vishing (Verbal Phishing), Phishing, spoofing, skimming (cloaning), Juice Jacking, Identity Theft etc. may be seen as modes of financial fraud, whereas social media, dating apps, matrimonial sites, etc are playing a vital role in social frauds. The pandemic has created a big gap among people by an increase in the usage of online transactions to ensure social distancing. Further, due to the arose of financial crunch in the market, people are very much worried about managing their daily expenses during the period of pandemic. Cybercriminals are exploiting this fear and the financial need of people. That is why no one has escaped from the crunch of cybercriminals and it does not make any effect that how educated he/ she is. In March 2020, many apps came on the market under the name of coronavirus tracking, which was like weapons of cyber criminals to make scam people³. On the same line, a new type of online fraud is much highlighted these days, which is known as Fraud through Loan Apps. Lots of cases have come to the notice of investigating agencies where people have faced such types of fraudulent activities.

² Shivani Shinde & Neha Alawadhi, "India becomes favourite destination for cyber criminals amid Covid-19", *Business Standard*, April 6 2021, available at <https://www.business-standard.com/article/technology/india-becomes-favourite-destination-for-cyber-criminals-amid-covid-19-121040501218_1.html> (last visited on May 27, 2021)

³ "Android Users, this coronavirus tracking app is a scam", *The Times of India*, March 16 2020, available at: <https://timesofindia.indiatimes.com/gadgets-news/android-users-this-coronavirus-tracking-app-is-a-scam/articleshow/74660613.cms> (last visited on May 25, 2021)

II. CORONA PANDEMIC

Pandemic is declared when some new type of disease is noticed in many countries for which people feel themselves helpless due to lack of immunity and non availability of any proper treatment for the same. A pandemic make a long-lasting effect on society either through physical, educational, financial, social or technological, etc. Corona Virus causing a disease known as Covid 19 is also such a type of disease for which the research is going on for medicine due to the non-availability of confirmed treatment and is affecting the people badly - specifically having low immunity through community spread. After the outbreak of the disease at the global level, well known as Covid 19, which was earlier told to be found in China in December 2019, World Health Organization (WHO) declared it a Pandemic in March 2020. This virus is affecting the physical fitness of any person through the lungs and creates main problems of low oxygen levels in the body along with fever, loss of smell and irritation in the throat, etc. The severity of the disease could be understood from the declaration of lockdown by the Government in the full country in the year 2020 and in many States during 2021 too as a part of necessary measures to protect citizens. This pandemic exposed the loopholes in the Medical system of the country which was found inadequate in comparison to many countries in spite of having the second position in the matter of population. The sudden declaration of the pandemic has also affected the economy of the country due to which lakhs of people lost their jobs. This situation has created job crises in Indian Market where the fresh pass-outs from colleges and Universities too are not able to get jobs. Where the employees have not been sacked by many big companies, many of them are still facing salary cuts, stoppage of various additional allowances, and employees sent on unpaid leaves. Such type of problem is not only faced by Private employees but the Government employees too. It has been seen that Government has freezed the Dearness Allowance (DA) of employees for 18 months during the period 01.01.2020 to 30.06.2021. Further, there are many govt departments where employees are not getting the salary in time bound manner during the pandemic. It is not only the employees who are facing financial crunch due to sudden declaration of pandemic. The small shopkeepers and many industries like Tourist Industries, Aviation Industry and Entertainment Industries are also in trouble. People are worried to come out of their houses with free mind and making purchases, which is causing loss to the shopkeepers. In brief, it will not be wrong to say that Corona virus has triggered new crises in Indian economy due to loss of many loved ones and savings in the pocket of individuals.

In normal situation, the person in need always look around for some financial assistance from relatives, friends or other financial institutions but during the pandemic, sometime it made difficult to provide financial assistance by relatives and friends too. At this moment, a person in need got no option other than to approach bank or other financial organizations. It is a well known fact that if any person wish to avail financial Assistance from Banks or other Non Banking Financial organizations, he/ she has to pass through a long process of documentation etc., which is very time consuming and hectic in nature. Thus, many times it does not serve the purpose of a person who wishes to take loan to fulfill his/ her immediate requirement, which creates a gap of time between the loan provider and loan seeker. To take benefit from such a situation by filling such gap, many money lenders come forward by providing personal loans through apps with interest rates on higher side i.e. 36%⁴ annually and adding many hidden terms & conditions, which may not be treated ethical like using of contact list⁵ of the borrower for recovering loan amount with interest. After the start of Pandemic, it is a new trend which is badly affecting the society at large.

III. LOAN APPS

Earlier, it was well said that everyone is supposed to limit expenses within his income and it was also incouraged to make savings for difficult time. However, Western Culture is totally different where they don't believe in savings and that is why they have low trend of saving but enjoying the life by going on tour to various countries. It was trend in foreign countries that they got loan on very cheap rates from banks and other financial institutions. With the process of globalization, our life style has also changed and many western things are adding in our life like availing loan facility for any purpose either it is entertainment or our day to day requirement, which was not treated good before the concept of globalization. Today most of the person need loan either it is from low income group or high income group to fulfill their various requirement. After the Pandemic, this trend has been increased with a rapid speed, specifically where people were not able to control their expenses in spite of decreasing income. There are lots of people who are in search of easy loan and for getting loan they are so depressed that they even don't take care to see the drawback behind taking loan. Thus changing trend of taking loan has now become weakness of our society for which some persons tries to take benefits by various means. It is matter of fact that any disease makes effect on the weakest part of body and

⁴ MoneyTap Benefits, available at: https://web.moneytap.com/fa/#/qual/quick-profile?utm_medium=Top-loan-apps-blog&utm_source=organic&utm_campaign=blog (last visited on May 26, 2021).

⁵ "Beware! Loan apps gain full control of your contact list", *The Times of India*, March 03 2021, available at: <https://timesofindia.indiatimes.com/city/hyderabad/beware-loan-apps-gain-full-control-of-your-contact-list/articleshow/81300652.cms> (Last visited May 27, 2021)

same situation is criminals who are like a disease in society and always in search of weak part of society to make them soft target for their criminal activities. Loan app is one of the various mean to make fraud with people to grasp their hard earned money.

It has been seen that some fraudulent persons contact people on the name of some big brands and offer loan to the needy person as noticed in case of SBI, where, State Bank of India issued alert about same to save their customers from such type of fraudulent activities on the name of “SBI Loan Finance Ltd.”⁶. In such type of cases, the scammer make a call on the name of company and discuss all the things in such a way like providing detail of bank Account, PAN Number, Family members etc. which are easily available from many persons so that the person on other side get confirmed about the authenticity of the caller. Further, such type of fraud may happen more with that persons who have low credit score and the caller offered them loan without checking the credit score. Thereafter, the caller will ask some money on the name of processing fee of loan application and once the victim transfer money than thereafter the victim found no information about the person on other side. This is just one small example of Frauds on name of loan apps, but this situation get more worse when the loan seeker is asked to fill a form by clicking on some given link or form and once the form is filled and OTP is provided to the scammer than some spyware get inserted to make eye on the secret information like passwords/ bank details etc., which are used in later stages by the cyber criminals to encroach money.

Another big scam on the name of loan app is where the loan is disbursed but there after effects are so dangerous that many persons got suicide after taking loans from such type of apps. Here the loans are offered on immediate basis without any much documentation but interest on very higher side with many other hidden charges/ terms & conditions to those persons who have good credit score, which means having a good reputation in financial matters. Once this loan is applied by a customer by providing some documents like Aadhar Card, Bank Statement, PAN Card etc. along with permitting access to his mobile contact book, he got loan immediately, but feels aggrieved when the process of recovery starts. The customers are humiliated and sometime threatened when they show some difficulty to repay loan. It is a hard core fact that any one will not like to get defame on his name, specifically in the money matters. The lenders took benefit of this weakness and threat that they will expose his financial status to all in his contact list or through some social media. It has been seen that many customer took a loan to repay the earlier

⁶ “Alert! SBI names company, says beware of this fake Loan provider; has it contacted you?”, available at: <https://www.zeebiz.com/companies/news-alert-sbi-names-company-says-beware-of-this-fake-loan-provider-has-it-contacted-you-155335> (Last Visited on May 28, 2021)

loan from some other lender and this chain goes on till all refuse to pay further loan but such type of solution can't be treated permanent. Finally, when the customer stuck and found no option available to repay the loan, his problems get started at this stage. The lender calls the borrower through recover agents in very abusive way and if still loans are not repaid that the friends and relatives of the borrower are contacted by telling that the borrower has taken their name as Guarantor. At this situation, the borrower feel humiliated when his friends and relatives contact him and make opposition for making them guarantor without their consent. To avoid such humiliation either the borrower, choose to repay with higher interest rate or it has also been seen in many cases that the borrower chooses the way of suicide to get escape from this tension⁷.

IV. BENEFITS OF LOAN APPS

1. With the development of Information & Technology, all the traditions system of business in changing. Thus lending activity can't escape from the digitalization of various services. Digitalization of various services of Bank makes the services more transparent and approachable toward the customer. People can have self access and analyze the available services of the financial institutes either it is bank or NBFC;
2. The concept of fair competition creates scope of various type of development i.e. either by way of launching new schemes or updating the existing schemes or providing option of tailor made schemes before the customer;
3. The borrower gets the opportunity to compare and evaluate various options available in the market at single sitting by visiting all websites of individual banks/ NBFCs. It saves lots of money and energy of individual, which may be used for other things;
4. The availability of all details of lending organizations creates concept of Accountability and transparency in the system;
5. Online digital lending provides power to the borrower where he gets various options to avail loans. Thus the situation of borrower is on upper side where he can bargain with the lender on interest and other terms & condition of the loan agreement, specifically where the Credit Score of borrower is high.
6. Growth of digital lending may play an important role in development of the economy of the country.

⁷ Sreenivas Janyala "Calls, threats: The three suicide driven by instant loan racket", The Indian Express December 31, 2020, available at: <https://indianexpress.com/article/india/calls-threats-the-three-suicides-driven-by-instant-loan-racket-7126944/> (last visited May 28, 2021)

V. CHALLENGES OF LOAN APPS

Breach of Privacy: It is true that instant disbursement of financial assistance has made the life easy i.e. too without any physical running at banks/ financial institutions but only through a small electronic device called as mobile and some applications installed in it. By these apps, it is very easy to apply and avail facility of personal loans from the lenders available on digital platform. In today's technology oriented society, there is no need to visit physically to any branch of the financial lender either it is a bank or some NBFC. Loan facility without any physical clutter seems very attractive to the borrower but many one forget that this is just a loan amount which is supposed to pay back. Further, every facility needs to be pay back in form of some price, which becomes very big cause of trouble in the case of loan apps in the form of privacy violation & harassment by the recovery agents. Due to various types of hidden terms and conditions alongwith permission taken by the lender from borrower while disbursement of loans, there is long list of victims who feels themselves cheated after availing loans through these loan apps.

It is well known fact that online digital lending apps takes all types of permission on mobile, like many other apps, to have access on many things of borrower including contacts lists/ messages/ gallery having photos & videos etc., to approve him/ her eligible for any loan. In any circumstances, if a borrower is unable to repay the loan amount, the lender misuses the permissions by various means. For example, the relative and friends of borrower will be called by taking mobile numbers from the contact list in abusive way to defame the borrower in his/ her social circle. In such a situation, the borrower's will either pay back the money with high interest rates or face a situation where his relative and friends make distance from him/ her. It has been seen in many incidents that victim of such type of harassment preferred to suicide. Such type of incidents raises the issues of privacy violation.

The situation becomes more problematic when the victim try to chase the physical offices of the lenders but do not found any solution in absence of availability of any physical presence of office as most of the lender run their business in online mode only through virtual space. In such a situation when the lender is running his business virtually, it becomes difficult for the victim to find the lender in physical space. Situation becomes worst when another problems with contacting to victim raise wherein whenever the victim try to call back the recovery agent on the number shown on his mobile. Normally, recovery agent use Internet calls to contact the victim, wherein the victim fails to make a return call. In such a situation, if the victim approaches to the police, they too feel helpless to trace the recovery agent, who made threatening call. Thus,

in many states efforts are going on to ban the loan through apps in virtual world. In recent actions more than 400 loan apps have come under the scanner of Telangana Police, wherein, many Chinese loan apps have also been banned by the Government⁸. It was come to notice that data of citizens including details of PAN Card, Aadhaar Card, photos, documents etc. were going to Beijing with the help of these loan apps. It is not just a matter of threat to individual but it may too creates certain concern toward national security where some officer of senior position also avails such type of facility of loan and get trapped in the unauthorized online apps. In an action, Hyderabad Crime wing has also filed a charge sheet in the case of such type of microloans⁹.

Other Challenges: There are many more challenges which are coming in front of us due to which people are becoming victim of frauds from online loan apps:

1. Due to less education and lack of proper resources, people are not much aware about latest technologies going on in the market and various types of other frauds happening around them. Thus, accessing the wrong digital lending platform may take the person to a vulnerable situation;
2. Many time people open the web-link of some site in confusion of original lender due to various reasons. In such a situation, a person may struck in trap of fraudulent persons in cyberspace;
3. Many people did not find to have access of digital lending platform comfortable and feel unsecured due to various reasons;
4. Virtual space has made it very easy to spread any information around the world in a very quick manner without confirming its authenticity. Thus the availability of any information on the online portal does not ensure its accuracy in complete senses
5. Digital lending attract borrower on easy disbursement of loan without any much paper work but situation becomes worst when in later stages, it comes to know about the high interest rates and other hidden terms & conditions including process of recovery of dues from borrower.

⁸ Namrata Biji Ahuja, "After App ban, govt cracks down on unauthorized Chinese-led 'instant' loan apps", *The Week*, January 04, 2021, available at: <https://www.theweek.in/news/biz-tech/2021/01/04/after-app-ban-govt-crackdown-on-unauthorised-chinese-led-instant-loan-apps.html> (last visited on June 03, 2021)

⁹ "Hyderabad Cyber Crime Wing files chargesheet in micro loanapps case", May 29, 2021, available at: <https://www.newindianexpress.com/cities/hyderabad/2021/may/29/hyderabad-cybercrime-wing-files-chargesheet-in-micro-loan-apps-case-2308930.html> (Last visited on June 04, 2021)

VI. GUIDELINES PERTAIN TO ONLINE LOAN APPS BY RBI

After receiving the lots of complaints regarding online loan app frauds and mental harassment along with increasing litigations in courts for the same, investigation happened many time with different types of angles. Accordingly, guidelines have also been drafted by RBI in this regard.

In the changing trends in technology, Banks and NBFCs also have entered into lending loans through digital platforms. Some criminal minded people took the benefit of this opportunity has launched their own digital platforms for lending loans, which created situation of confusion between the customer for their reliability. After receiving lots of complaints regarding authorized/ unauthorized loan apps with high interest rates, breach of data privacy, harassment related issues while recover of loan amount and also for misuse of agreement for accessing the mobile data, Reserve Bank of India issued strict Guidelines with cautions while lending activities by Banks, Non Banking Financial Companies and by other entities regulated by the State Governments through a public notice¹⁰. Earlier there were many loan apps which were used to provide loan to the borrower but the details of lender i.e. Address, Registration etc. was not traceable and thus the customer was not able to make a complaint in case of any grievance, but now the situation has been changed. The banks and NBFCs have been directed to adhere Fair Practices Code guidelines by lending through own digital lending platforms or through outsourced lending platforms with regulatory instruction binding upon them. The name of registered digital lenders engaged by Banks and NBFCs may be checked at the website of Reserve Bank of India. Vide a Notice with ref no. RBI/2019-20/258 DOR (NBFC) (PD) CC. No.112/03.10.001/2019-20 dated June 24, 2020 on the subject “Loans Sourced by Banks and NBFCs over Digital Lending Platforms: Adherence to Fair Practices Code and Outsourcing Guidelines”¹¹, few instructions have been issued by the Reserve Bank of India:

1. The Banks/ NBFC are supposed to inform the name of digital lending platform, who are attached with them. Further, digital lending platforms are also supposed to inform the customers, the name of Banks/ NBFC on behalf of which they are working and providing loan facility to customers through their website and other documents while making agreement. Due to such things people are now able to make complaint of the lender in case they feel aggrieved from lender due to any reason; either it is matter of higher interest rates or harassment for recovery of money etc.

¹⁰ Reserve Bank of India, available at: <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR819297A4F4A08194EF796C4D35ED26D1798.PDF> (Last Visited on May 28, 2021)

¹¹ Reserve Bank of India, available at: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/CCN112LNBCF387F4EE693D74EA6A70E6938C7CDCE47.PDF> (Last visited on May 28, 2021)

2. It has been directed by RBI that loan Sanctioning letter is supposed to be provided to customer immediately by the Bank/ NBFC before the execution of the loan agreement regarding certain conditions i.e. amount of loan, Rate of Interest etc. It was not happened earlier before the RBI instructions due to which the customer were harassed on the basis of hidden terms & conditions and other issues like violation of privacy through accessing contact list of Mobile of customers.
3. It has been directed by RBI to the Banks/ NBFCs to ensure the effective monitoring over their digital lending platforms along with awareness between customers about grievance redressal mechanism of the Bank/ NBFCs.

By the above instruction, RBI has tried to save the interest of borrower and therefore, to make it more effective, it has been specifically been mentioned by the Reserve bank of India that violation of any instructions by Bank/ NBFCs/ Online digital lending platforms will be viewed seriously.

Personal Data Protection Bill 2019¹²: Due to the threat of privacy breach, a bill was submitted before Parliament in December 2019 with purpose to create an authority called as “Data Protection Authority of India” to protect personal data of citizen of India. This bill was submitted after getting the recommendations of a committee constituted in the year 2017 to study various types of data protection issues. The bill contains provision of various rights of individual as well as obligations on the intermediaries. This bill has also the provision of punishment in case of the violation of the various provisions in the bill. However, the bill is still pending with Joint parliamentary standing committee as concerns were raised that the Government will take control on the privacy of citizen by undue interference. It is a well known fact that social platforms like facebook, twitter etc. have data of crores of Indian citizen, which is on stake. In recent news, it has been come to notice that data of 533 million facebook users were sold¹³. Through these types of social platforms, loan apps owners purchase database of contact numbers, email IDs etc. and later on approaches the persons for providing facility of easy loans, through phone calls, messages etc. Whenever, the needy person come to know about availability of loan from these apps, he get trapped on the lucrative offers shown by the caller/ message sender. Further, once the victim, get himself registered in one app, he/ she too get automatically registered in many other related apps. Therefore, inspite of many related concern,

¹² The Personal Data Protection Bill 2019, available at: <https://prsindia.org/billtrack/the-personal-data-protection-bill-2019> (last visited on June 09, 2021)

¹³ “Data of 533 million Facebook users being sold via Telegram bot: Report”, available at: https://www.business-standard.com/article/technology/data-of-533-million-facebook-users-being-sold-via-telegram-bot-report-121012600279_1.html (Last visited on June 10, 2021)

such type of bill is the need of time to make a control of the access of data by any app on the mobile.

VII. CONCLUSION

From the above discussions it is very clear that digitalization of every service including financial services like lending/ borrowing etc. is the need of the hour to stay in the world of competition. It will be wrong to say that all loan apps are doing wrongful activities and there are many loan apps that are duly recognized by the Government/ RBI. Therefore, Government must initiate an awareness campaign among the people to know about the authorized loan apps along with the other fraudulent activities going around them through some unauthorized and illegal online loan apps. A simple formula to know which loan app is legal and which one is illegal is to check the RBI website. Any loan app which is registered with RBI is legal and the others are illegal, however, one precaution that is required to be taken by the customer is regarding the resemblance of names of legal and illegal apps.

Further, it is true that the laws and rules/ regulations are there for the safety of people, action has also been taken against many apps and many recovery agents have been arrested recently for their illegal practices to recover money through blackmailing in the name of defaming, threatening to women, etc. but it is also true that people must also be well aware of going on wrongdoer around them and required to take following precautions while applying for App based loans:

1. If applying for an online loan through some app, the borrower must be aware of the lender's company i.e. formation of the company, detail of owners, place of its registration, name of authority under which it has been registered, Registration number, address of the office(s) i.e. head office/ branch office with contact details, etc. so that the concerned company/ persons may be approached in case of any unseen disputes/ litigations regarding interest rates, harassment during the recovery process, agreement conditions, etc.
2. If someone is assuring app-based loan without much documentation or without referring credit score or banking history, which is the mandatory requirement to check the repaying capacity of the borrower, then such type of persons may be frauds;
3. If someone is asking for a processing fee without disbursement of a loan or provides such a scheme that is more attractive in comparison to normal circumstances then it may be a fraud and due care is required to know about the authenticity of the lender by asking his address or legal recognition by the government. The provided detail of the company

be also be counter checked from the website of Ministry of Corporate Affairs, which plays an important role to regulate the corporate sector, or from the website of the Reserve Bank of India for Non-Banking Financial Company;

4. It is always advisable to avoid transfer of money through scanning of bar code or going through some provided link or providing OTP to the unknown caller;
5. Everyone must be aware that nothing is free in the world and if some person is approaching at own to you for providing a loan then it must be assured from him the source of his contact details from which the other person comes to know about his loan requirement. For example, if the other person tells that he is from XYZ bank where the person has a saving bank account, the same thing may be cross-checked from the bank by calling on landline number of the bank or contacting the relationship manager of the bank;
6. It is the hard-core fact that self-awareness is bliss. Therefore, if any person wishes to avail of the benefit of app-based online loans, he/ she must ensure to read all the related regulations of RBI regarding same like name of the Bank/ NBFC behind the digital lending platform and following the guidelines by the money lender;

In case of any call or message is received for a loan through digital platforms, it will be better to visit the linked bank/ NBFC of the digital platform to know the authenticity of the app. Further, loans from banks should be preferred rather than taking from some digital platforms as it will also help in data protection & privacy issues. But still if due to urgent need, the loan is to be taken from loan apps, everyone is supposed to be more careful.
