A Study on Legal Framework in Indian E-Banking System

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Electronic banking, also known as Internet banking, has brought about a great change in the banking industry and has had a huge impact on the 'banking-relationship'. Internet banking includes the delivery of bank related products and services.

It can be divided into four major sites, such as level one site, which determine only deposit accounts data, to level IV sites, which have integrated sales of high-end additional products and other types. The investment services and insurance related data is easily integrated and spread globally.

In other words, successful internet banking offers the following solutions:

(i) Fixation of exceptional rates on savings,

(ii) To check without any monthly fee,

(iii) Free bill payment and ATM (ATM) machine surcharge waiver

(iv) Easy online access and account opening for all types of accounts, personal loans and mortgages

(v) Round the clock audit of accounts and

(vi) To provide 'Quality Customer Services' with personal vigilance.

DEFINITION OF E-BANKING:

“Internet Banking or e-Banking shall mean a solution to perform any banking function by using a personal computer and a browser to connect to the website of his/her bank.”

In the Internet banking system, the bank provides centralized data on the website. The services that the Bank allows are broadcast over the Internet in the menu. Any service can be selected and further clarified depending on the nature of the service.

The traditional branch model of the bank is now replaced by ATM. The network has been replaced with alternative delivery channels.

E-BANKING PROCESS (PROCEDURE OF E-BANKING):

E-banking is a new era in the field of banking. When the bank provides services to its customers through Electronics Distribution Channel, it is called E-Banking. E-Banking is the result of technological innovation and competition.

The bank uses electronic and telecommunication networks to send its value added products and services. Equipment for this includes telephone, computer, fax A.T.M. etc. are included. Now banks have included some new services like Internet Banking and Mobile Banking.

Through ATM one can do banking anywhere and at any time. Any person can withdraw money from his account by using ATM card.

With the help of personal computers and the World Wide Web (w.w.w.), banks have increased the use of the Internet. Customers are able to give their instructions to the bank through the Internet. We call this E-Banking or I-Banking or Net-Banking. The banking which is gaining popularity at present is also called online banking.

According to RBI, banks were to be enabled for internet banking in three tiers:

1) Basic level of service in which the Bank's websites disseminate information about various products and services to the customers. It can receive and answer customer queries via e-mail. It is also known simply as information service which provides general purpose information like interest rate, branch location, bank products and their features etc.

2) Simple transactional websites that allow customers to access their instructions, apply for various services, and inquire about their account balances. They do not allow any fund based transactions on their account. It is also known as electronic information transfer system which provides specific information like account balance, transaction details, account details etc.

3) The third tier of Internet Banking services is provided by fully-transactional websites that allow customers to transfer funds, pay various bills, subscribe to other Bank products and purchase and sell securities. Allows to work on accounts. It is also known as fully electronic transactional system.

The system requires a high degree of security control as it involves technology encompassing computerization, networking and security, inter-bank payment gateways and legal infrastructure.

Indian banks are still far behind international banks in providing online banking. This is not possible without adequate infrastructure or sufficient number of users. Experience shows that transactions done on the net are limited

SERVICES THROUGH E-BANKING

Send money from your account to someone else's account: Through internet banking, we can send money to any other person's account instantly. Nowadays banks are providing many types of new services, in which it is not necessary for the beneficiary to have his own bank account, he can withdraw money from any ATM using just his mobile.

- Check your account balance.
- View bank statements of transactions in your account.
- Opening of new FD or other account.
- Mobile recharge.
- Paying electricity, water, dish TV and other bills sitting at home.
- Download your statement of account.
- Ordering a check book.
- Online shopping.
- To demand any available banking service from the Bank or to lodge a complaint.
- View or change your account information.
- Doing stock market and various other investments online.
- Booking bus, rail and other tickets from the internet
- Make your tax and other payments online
- Filling the form for DD Demand Draft online.
- View the details of your loan and other accounts.
- Buying life insurance, auto insurance and other banking services and products online.

And so on.

LEGAL FRAMEWORK AND ISSUES IN 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 Foreign Exchange Management Act, 1999 are few among many such legislations. It is mandatory on the part of all entities to obtain a license from Reserve Bank of India under Banking Regulations Act, 1949 to function as bank. 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.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 is 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
- The Foreign Exchange Management Act 1999
- The Information Technology Act 2002
- Provisions of Indian Penal Code, 1860
- The Consumer Protection Act 1986
- The Indian Contract Act, 1872
- The Negotiable Instruments Act,1881
- The Indian Evidence Act 1872
- PREVENTION OF MONEY LAUNDERING ACT, 2002
- INCOME TAX ACT 1961
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) Act, 2002 Let's look at the provisions of all these major banking enactments.

THE BANKING REGULATION ACT 1949:

Banking in India is majorly regulated by the Banking Regulation Act, 1949. The Banking Regulation Act, 1949 is a law in India that regulates all banking firms and companies in India. It was passed as the Banking Companies Act 1949. Which came into force from 16 March 1949 and later on 1 March 1966 it was changed as Banking Regulation Act 1949.

This act gives the power to license banks through the Reserve Bank of India (RBI). Under this, the rules of shareholding and voting rights of shareholders are done. And it oversees the appointment of boards and management and regulates the operations of banks, gives directions for audit. and the control thereon, moratorium, merger and liquidation; Issues directions in the interests of public good and banking policy and also provides for penalties if necessary.

THE RESERVE BANK OF INDIA ACT 1934

The Banking Regulation Act, 1949; the Reserve Bank of India Act, 1934 and Foreign Exchange Management Act, 1999 are few among many such legislations. It is mandatory on the part of all entities to obtain a license from Reserve Bank of India under Banking Regulations Act, 1949 to function as a bank. Besides, banking activities are also influenced by various enactments governing trade and commerce, such as The Indian Contract Act, 1872, the Negotiable Instruments Act, 1881, Indian Evidence Act, 1872, etc [1].

THE FOREIGN EXCHANGE MANAGEMENT ACT 1999

Under the Foreign Exchange Management Act, 1999, Non Residential Indians can lend, open a foreign currency account or borrow from a bank in India including from a Non-Resident bank, except under certain circumstances provided under the law. Besides, banking activities are also influenced by various enactments governing trade and commerce, suchas, Indian Contract Act, 1872, the Negotiable Instruments Act, 1881, Indian Evidence Act, 1872, etc.

THE INFORMATION TECHNOLOGY ACT 2002

The Information Technology Act, 2000 is a primary law dealing with cyber crimes and Electronic Commerce in India. This act have a direct bearing on the working of the internet banking in India and thus it can be said that Internet banking cannot be operated without being in conformity with the IT Act 2000. Following are the points which highlight the importance of Information Technology Act, 2000 in regards to internet banking:

(i) Scrutinization of Documents

(ii) Electronic Transaction

(iii) Authentication

(iv) Digital Signature

(v) Privacy

(vi) Data theft

Few of the important provisions of the IT Act are as follows:-

a) **Section 3(2):** This section recognizes only one particular technology (crypto function and hash function) as a means of authenticating electronic records. This approach has been kept technology neutral in various nations.

b) **Section 4:** This provision gives legal recognition to all the contracts and agreements made in electronic form.

c) **Section 72:** It provides for the penalty in case of privacy breach

d) **Section 79:** It provides immunity to the network service providers and excludes them from liability in case of any illegal activity committed through their network.

In January 2011, RBI constituted G Gopalakrishna Working Group to review the security of Electronic Banking in India. The committee on April 2011 notified20 few changes which constitute the current regulatory guidelines.

PROVISIONS OF INDIAN PENAL CODE, 1860

The main provisions relating to dealing with the E-Banking Frauds in India are as follows:

- **Section 383: Punishment of Extortion-** Whosoever intentionally and illegally puts a person in fear to deliver any property or valuables to him, otherwise he will defame that person by posting some defamatory statement or Article against the said person shall be punished with imprisonment which may extend to three years, or fine, or both.

- **Section 379: Punishment of Theft-** Whosoever dishonestly take away the goods or any electronic record illegally from the possession of it's rightful owner without his express consent shall be punished with imprisonment which may extend to three years or with fine or both.
- **Section 406: Punishment of Criminal Breach of Trust-** Whosoever mis-appropriates any movable property like computer device or any electronic device which was entrusted to him for a lawful purpose, causing wrongful damages to it's owner shall be punished with imprisonment which may extend to three years or with fine or both.
- **Section 417: Punishment of Cheating-** Whosoever impersonates some other person which he is not or knowingly substitutes such person, and causes wrongful losses to the innocent victim shall be punished with imprisonment which may extend to one year, or fine or both.
- **Section 471: Using as genuine a forged document or electronic record-** Whosoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows to be forged shall be punished with an imprisonment which may extend to two years or fine, or with both.
- **Section 500: Punishment of Defamation-** Whosoever knowingly publishes without any justification or reasonable cause any statement, image or document on social platforms, believing and knowing it to be false against any person, firm, company were such imputation will definitely lower the image and intellect of him in front of the general public, shall be punished with simple imprisonment which may extend to two years or fine or with both.
- **Section 506: Punishment of Criminal Intimidation-** Where a person's threatens other person to harm his reputation, life or property via an electronic means which induces that person to commit an illegal act or prevent him doing an act which is legally obligatory on him shall be punished with imprisonment which may extend to two years, or fine or both.

THE CONSUMER PROTECTION ACT 1986

This act aims to protect the interests of the consumers. It is also applicable to Banking Services as well. The issues such as privacy, the secrecy of consumer's accounts and the rights and liabilities of customers and banks, etc. in respect of internet banking are protected through this act.

The Consumer Protection Act, 1986 defines the rights of consumers in India and applies to banking services as well. Currently, the rights and liabilities of consumers availing of Internet banking services are being determined by bilateral agreements between the banks and customers. It is open to debate whether any bilateral agreement defining customers rights and liabilities, which are adverse to consumers than what's enjoyed by them within the traditional banking scenario will be legally tenable.

NEGOTIABLE INSTRUMENT ACT, 1881:

Section 6: The concept of Truncated Cheque and e-cheque was added. These cheques are negotiable instruments in electronic format which are a part of internet banking. All of these instruments are required to maintain minimum safety requirements with the use of digital signatures (which may be linked with biometric).

PREVENTION OF MONEY LAUNDERING ACT, 2002:

The concern that Internet banking transactions may become a conduit for money laundering, has been addressed by the Group. Such transactions are initiated and concluded between designated accounts. Further, the proposed Prevention of Money Laundering Bill 1999 imposes an obligation on every depository financial institution to take care of records of transactions for a particular prescribed period.

The Banking Companies (Period of Preservation of Records) Rules, 1985 also require banks to preserve certain records for a period ranging between 5 to 8 years. The Group is of the view that these legal provisions which apply to all banking transactions, whether Internet banking or traditional banking, will adequately take care of this concern and no specific measures for Internet banking are necessary.

INCOME TAX ACT 1961: Section 40A (3):

The Benefit of this section is available to the account holder only when the amount is transferred through internet banking or through a cheque. This section is intended to prevent tax evasion and to bring all the transactions above 20000 under the preview of the bank.

SOME DIFFICULTIES ARE AS FOLLOWS:

1. E-banking has many security parameters, but not certified by the proper authority.
2. The received communication bandwidth is as required.
3. Power supply is interrupted in most of the banks while such services require continuous power supply.
4. Statements for such services are one-sided; Or take advantage of Bank Supremacy. This does not give confidence to the customers.ATM and Telebanking get priority.
5. Internet does not have geographical boundaries. Computer related crime (Cyber Crimes) is difficult to control. There is a great need for adequate Cyber Laws.

Despite these hurdles, it is gaining popularity and there are many ways to establish E-Banking As:

1. Department of Telecommunications is providing additional Band Width.

2. Steps have been taken to appoint a Certifying Authority.

3. The Chief Vigilance Commissioner is emphasizing on more computerization or the proposed constitution of Credit Information Bureau will help I-Banking.

4. The Reserve Bank has implemented Real Time Funds Transfer through Real Time Gross Settlements (RTGS) system.

5. Access will be through a specific Gateway only. This will ensure Rigorous Access Control.

6. Various levels of security are being ensured by RBI.

7. Significant increase in dematerialization of shares will help E-Banking.

8. E-Banking will be encouraged through payment gateways created by various banks.

9. RBI has constituted a team to oversee various issues related to I-Banking and technology. This will help in creation of proper infrastructure.

CONCLUSION

The Information Technology Act 2000 attempted to address several e-commerce regulatory issues, but some grey areas still exist, which have neither been spelled out properly nor any workable modes of implementation suggested by Constitutional institutions. The IT Act of 2000 did address the necessity for banks to travel online and have laid out security measures to be adopted. However, one cannot say the aspirations of the industry are satisfactorily looked into. Also, the privacy procedure laid down by banks for providing access to internet banking needs to be recognized by law similarly security procedures.

The six primary drivers of ebanking includes, in order of primacy are:2020

1. Improve customer access.
2. Facilitate the offering of more services.
3. Attract new customers.
4. Provide services offered by competitors.
5. Reduce customer attrition

E-banking is changing the banking industry and is causing major effects on banking relationships and its working nature. E-banking involves use of internet for delivery of banking products and services.

The only good for Internet Banking in relation to its legal framework is that, the Central Bank, Parliament, and few other authorities are working extensively to bring up a consolidated law relating to internet banking and are trying to match the international standards. And thus on denouement it can be said that there is an urgent requirement for the emergence of Internet Banking Laws in India.

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