

# ANALYSIS OF DEFICIENCY IN ATM SERVICES VIS-A-VIS LIABILITY OF THE BANKS

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## ABSTRACT

*With the surge in information and technology and use of ATMs, lot of cases have been pouring in either pertaining to withdrawal of cash or non-availability of cash in the ATMs. The main purpose for introduction of ATMs for obtaining account related information, cash withdrawals, deposits etc. was for the benefit of their customers without directly interacting with the bank<sup>1</sup>. Now, there are more cashless transactions either through internet transactions or through the use of ATMs<sup>2</sup>. This shows that majority of people now prefer virtual payments. Particularly the young generation is using internet banking. The day is not far when the banks may soon stop issuing cheque books. This in turn would be a major contribution of the banks towards go-green drive. It is high time to go paper less and encourage people to use net banking. At the same time, it is necessary for the banks to have their systems full proof, be it online banking or use of debit cards or credit cards by their customers. It is also necessary for the banks to ensure their customers prompt and speedy remedies in case of any fraud reported to them by the customers, as thefts related to banks are getting sophisticated day by day.*

## INTRODUCTION

We all are aware that banks charge their customers for usage of ATMs. This way the customer is free to use any ATM and automatically by virtue of this usage, he or she becomes a customer of the bank. When minimum balance is not maintained by the customers, then the banks

<sup>1</sup> Available at [https://en.wikipedia.org/wiki/Automated\\_teller\\_machine](https://en.wikipedia.org/wiki/Automated_teller_machine) last seen on 27/06/2018.

<sup>2</sup> Nayak, G. (2018, June 27), India sees more cashless transactions through internet, ATM, etc. as consumers favour virtual payment. *The Economic Times*. Available at <https://economictimes.indiatimes.com/industry/banking/finance/india-sees-more-cashless-transactions-through-internet-atm-etc-as-consumers-favour-virtual-payment/articleshow/47409118.cms> last seen on 27/06/2018.

penalize them for no balance or less than the minimum balance in their accounts. If this is the case, then how can a Bank get away so easily with no cash in their ATMs? Why can't the bank be held liable for deficiency in services if its ATMs does not dispense cash for the reason "cash not available"? Apart from this, if there are any failed transactions, then also the banks charge for every failed debit or ATM transaction. For example: "A" had checked his balance in the bank which was Rs.3,000/-. As minimum balance to be maintained in the bank was Rs.1,000/- so he went to a nearest ATM to withdraw Rs.2,000/- and the ATM stated that "A" did not have sufficient balance in the account. "A" checked his phone as well as his email to verify if there was any notification from the bank regarding withdrawals. "A" checked the e-statement and found multiple withdrawals along with GST thereby leaving a mere Rs.1,500/- as balance in his account. After inquiring from the bank, it was found that these number of transactions along with GST were accumulated charges incurred from failed debit card transactions for want of minimum balance, apart from unsuccessful withdrawals from ATMs belonging to other banks<sup>3</sup>.

On the other hand, if "A" goes to withdraw cash from an ATM and the ATM does not dispense any cash for the reason "Cash not available", then, the question arises, how is "A" going to be compensated by the bank?

Similarly, if "A" goes to withdraw Rs.2,000/- cash from an ATM but ATM machine does not dispense cash and only generates a slip stating that Rs.2,000/- has been withdrawn, then in that case, what remedy is available to "A" ?

Generally, for electronic banking transactions, the banks ask their customers to mandatorily register themselves for SMS alerts and if possible to register for email alerts also. It is mandatory for the banks as per the RBI notification<sup>4</sup>, to send SMS alerts to their customers, whereas, email alerts may be sent only to those, who have registered themselves for the same. The banks must also advise their customers to immediately notify their bank of any unauthorized electronic banking transaction. It is to be remembered here that the longer the

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<sup>3</sup> Wangchuk, R.N. (2018, April 3), Banks Charge You Rs.25 For Every Failed Debit Card or ATM Transaction. Is IT Justified? *The Better India*. Available at <https://www.thebetterindia.com/136580/banks-charge-failed-debit-card-atm-transaction/> last seen on 27/06/2018.

<sup>4</sup> RBI/2017-18/15 DBR.No.Leg.BC.78/09.07.005/2017-18 dated July 6, 2017.

time taken to notify the bank about unauthorized transactions, the higher will be the risk of loss not only to the bank, but also to the customers.

Apart from this, all the debit, credit or prepaid cards are assigned with PIN, which is a confidential number and is only known to the user for carrying out any transactions at an ATM. Even for making transactions at a POS, the card holder has to enter the PIN which is known only and only to the cardholder, in case if it is a debit card. Whereas, in case of credit card usage at a POS, the requirement of PIN depends upon the policy of the bank on security and risk measures. On the other hand, in case of e-commerce transactions, an additional factor of authentication is applicable, which is known as OTP identification check, e-mail verification code check etc. except in the case of many international websites.

### **LIABILITY OF THE CUSTOMER**

It is been very clearly stated by RBI that the customer is not liable if any transaction takes place due to the negligence of the bank. Under such circumstances, the liability of the customer is zero.

Here, the liability of the customer arises only in case the customer lets his spouse or close relative use his or her card for withdrawing money from an ATM. If the spouse or a close relative goes to an ATM to withdraw the cash on his or her behalf and instead of ATM dispensing the cash, the ATM generates a transaction slip showing cash withdrawn. Then in that case, the customer tends to lose the entire money. The banks at no cost will reimburse the account. The reason behind this is that the ATM cards are non-transferable. In 2013, a Bengaluru woman was on maternity leave and she gave her Debit card along with the PIN to her husband to withdraw a sum of Rs. 25,000 from an ATM. After the card was swiped by the husband to withdraw the cash, the ATM machine instead of dispensing the cash, generated the transaction slip showing that the money was debited. They lodged the complaint with the bank. The bank turned down their request by stating that ATM card is non-transferable and sharing of PIN is an offence. The bank ombudsman closed the case by stating “*PIN shared, case closed.*” Then the couple approached the Consumer Court and filed a case against the bank.

which lasted for three years. The Consumer Court dismissed the case and stated that the woman should have given self cheque to the husband instead of her debit card and PIN<sup>5</sup>.

It is therefore to be remembered here that the debit card has to be used by the card holder itself. Sharing of debit card or ATM PIN with anyone is a violation of the rules of the bank.

## **LIABILITY OF THE BANK**

In spite of all this, if a transaction takes place without the additional security factor of authentication, as mandated by the RBI and if the customer lodges a complaint with the bank stating that the transaction has not been carried out by him, then in such a case the issuer bank shall reimburse the loss to the customer without raising any objection.

Broadly speaking, there are two categories of electronic banking transactions:-

- (a) *Online payment transactions*: These are the transactions that do not require submission of any physical payment instruments at the time of transactions. For example: internet banking, mobile banking, 'card not present' (CNP) transactions and pre-paid payment instruments (PPI).
- (b) *Face to face or proximity payment transactions*: These are the transactions that requires the presence of physical payment instrument such as card or mobile phone to be present at the point of transactions. For example: ATM, POS etc.

It is necessary that the systems and procedures in the banks must be designed in such a way that the customers should feel safe while carrying out electronic banking transactions. It therefore becomes necessary for the banks to put in place appropriate systems and procedures for safe electronic banking transactions, effective and robust fraud detection and prevention mechanism, effective mechanism to assess the risks that result from unauthorized transactions thereby also measuring the liabilities arising out of such events, effective measures to mitigate the risks and protect themselves against such liabilities. Apart from this, it is necessary for the banks to adopt an effective system of repeatedly advising their customers on various modes of protecting themselves from electronic banking related frauds.

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<sup>5</sup> (2018, June 07), Husband cannot use wife's debit card, says court. *The Economic Times* Available at <https://economictimes.indiatimes.com/industry/banking/finance/banking/banks-may-deny-payment-even-if-you-share-atm-pin-with-spouse/articleshow/64488850.cms> last seen on 27/06/2018.

*Liability of the Banks:* Following are the liabilities of the banks in case of no cash in their ATMs or in case of failed ATM transactions:-

1. *Failed ATM transactions:* As per the RBI notification<sup>6</sup>, in case of failed ATM transactions, the banks are liable to pay Rs. 100/- (Rupees One Hundred only) per day as penalty for delay in reimbursement for failed ATM transactions to the aggrieved customer. The banks have been mandated to resolve their customer complaints within maximum period of 12 (twelve) working days from the date of lodging of complaint by re-crediting their customer's account, in case of failed ATM transactions. The said notification of the bank clearly states that the compensation amount shall be automatically credited to the customer's account without any claim from the said customer. In case the banks fail to re-credit their customer's account within the said time period, then the bank is liable to pay Rs.100/- (Rupees One Hundred only) per day as a compensation to the customer.

While using the ATM it happens many times that the account gets debited, but the cash does not get dispensed at the ATM. Under such circumstances, the customers have to approach their home branch bank, which has issued them the ATM Card and lodge a complaint in writing in the event of a failed ATM transaction.

The bank has to redress the complaint of the customer on priority and if the customer does not get a satisfactory response from the bank within a maximum period of 30 days from the date of the lodging of the said complaint, then the customer can approach the Office of the Banking Ombudsman (in the appropriate jurisdiction) for redressal of their grievances.

In case of a failed transaction, the customer needs to remember the following:-

- Safely keep the transaction slip as this slip consists of the transaction reference number and every time dealing with the bank this reference number has to be quoted.
- Immediately call up the bank's customer care number and inform them of the failed transaction. The customer care number is generally mentioned behind the debit card.

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<sup>6</sup> RBI/2009-10/100 DPSS.No.101/02.10.02/2009-10 dated July 17, 2009.

- It is very important to quote transaction slip and the reference number on it.
- After that the executive of the bank will give a tracking number.

This tracking number helps in dealing with the bank till the amount is refunded by the bank. Generally the banks take 7 working days to refund the amount if the error is from their side.

2. *Cash not available in ATM*: If the ATM machine is short of cash or without cash, then under such circumstances, banks can be penalized if their ATMs does not dispense cash for the reason “cash not available”. A Consumer Court in Raipur has recently imposed a penalty of Rs. 2,500/ on State Bank of India (SBI). In this case, the Consumer Forum stated that when banks can charge for usage of ATMs for a whole year in advance and a client is free to use any of the ATMs, then he automatically becomes a customer, irrespective of the fact, whether he has a bank account in that particular bank or not. The Forum also stated that when customers are penalized for no balance or for not maintaining minimum balance in their accounts, then how can a bank get away with no cash in their ATMs<sup>7</sup>? This is the first such judgment for ATM failure.

From time to time RBI issues circulars/notifications of the banks to take steps to secure their ATMs so that the end users are not defrauded and also to update their software's. In spite of various warning by the RBI, still the banks have not made their ATMs secure. Time and again banks have been told by the RBI to make their ATMs skimming proof as skimming is one of the biggest racket for defrauding the users. The banks need to install anti-skimming devices in their ATMs for preventing the fraudsters to clone the debit card. Similarly the banks have also been told to install 'white-listing' solutions in their cash machines. Such solutions allow only the trusted applications to work on their ATMs and it blocks all other applications<sup>8</sup>.

## AUTHORITIES

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<sup>7</sup> (2018, June 22), Consumer Forum Holds Bank Liable for “Non-Availability of Cash” at the ATM. *LatestLaws.com* Available at <https://www.latestlaws.com/latest-news/consumer-forum-holds-bank-liable-for-non-availability-of-cash-at-the-atm/> last seen on 27/06/2018.

<sup>8</sup> Jaleel, T. (2018, June 22), RBI red flags unsecure ATMs: This is your liability if you are defrauded. *The Economic Times*. Available at <https://economictimes.indiatimes.com/wealth/personal-finance-news/rbi-red-flags-insecure-atms-this-is-your-liability-if-you-are-defrauded/articleshow/64693989.cms> last seen on 29/06/2018.

To escalate the issue pertaining to wrongly debit of account, the customer can approach the following authorities:-

- (a) *The Branch Manager*: The customer should approach the bank, where they hold the account. Every bank has a cell which is known as grievance cell to tackle such issues.
- (b) *Ombudsman*: If the issue is not solved by the Branch Manager, then the customer can approach with the matter to the Ombudsman. It is to be remembered that the complaints have to be sent in writing or online through the website of the Reserve Bank of India. One needs to approach the Ombudsman within 30 days of written complaint to the bank.
- (c) *National Consumer Disputes Redressal Commission (NCDRC)*: This is a quasi-judicial commission established in the year 1988. This Commission is set up under the Consumer Protection Act, 1986. So, if the matter is not resolved at the Ombudsman level, then the consumer has every right to take it up before the Consumer Forum.
- (d) *Legal*: This is the last option which the consumer can resort to. Generally the matters are sorted out in the Consumer Forum, but still under adverse situations, one can always seek the assistance of the legal counsel.

## CONCLUSION

The banking sector, being the service provider sector needs to be more vigilant and responsible, as at the end it is accountable for any fraud. Responsibility and accountability go hand in hand. Thus, it becomes imperative for the banks to be more careful in loading cash in their ATMs, especially before consecutive holidays so as to escape such penalty including customer dissatisfaction. It is the responsibility of the banks to ensure that they provide hassle free services to their customers. The banks should remember that when they can penalize their customers for no balance or less than minimum balance then even the banks can be held liable for deficiency in their services.