

ATM FRAUD: UNFOLDING A NEW MAGNITUDE OF RIGHT TO PRIVACY

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EXORDIUM

The Constitution of India is the world's largest written legal document has once been commented over as the 'paradise for lawyers' by a prolific author. The reason behind this statement by Sir Ivor Jennings was the ambiguity or vagueness in its design.¹ The complexity of its articles and schedules has further lead to unclearness in the minds of people. Nevertheless, the basic idea behind the framing of the Constitution is to allow everyone to live in a dignified and peaceful society. And for this everyone is granted certain interests and benefits which are backed by the Constitution itself. These benefits are known as rights which are the facts of life. The Indian Constitution has bifurcated rights in various forms namely political or civil and social or economic.² Among all the rights, the right to privacy is one such interest that has achieved a level of considerable discussion because of its perpetual boundary. Whenever the right to privacy is concerned one is reminded of an infamous case of **Kharak Singh vs the State of U.P.** as it emphasized the need for recognition of the right to privacy under fundamental rights.³ In a recent verdict by the nine-judge bench of the Supreme Court headed by Chief Justice J.S. Khehar, the right to privacy has now acquired a status of a fundamental right.⁴ This judgment of the Hon'ble Apex Court has overruled the 1961 verdict of **Kharak**

¹ Sir Ivor Jennings called the constitution of India a 'paradise for lawyers' because of some ambiguous terms. Do you think that constitutions of other countries like that of the USA etc. are simpler? Why is the Indian constitution a complex one? Quora, <https://www.quora.com/Sir-Ivor-Jennings-called-the-constitution-of-India-a-paradise-for-lawyers-because-of-some-ambiguous-terms-Do-you-think-that-constitutions-of-other-countries-like-that-of-USA-etc-are-simpler-Why-is-the-Indian-constitution-a-complex-one>, accessed on 7 September 2017.

² Narender Kumar, *Constitutional Law of India*, at 508(reprint 2016).

³ *Kharak Singh vs The State of U. P. & Others*, 1963 AIR 1295.

⁴ The Wire Staff, *Right to Privacy is a Fundamental Right, Says Supreme Court in Unanimous Verdict*, The Wire, (24 August 2017), <https://thewire.in/170303/supreme-court-aadhaar-right-to-privacy/>, accessed on 6 September 2017

Singh. Today, this right has been interpreted under Article 21 but the immenseness and ambits of this right are pretty much unpredictable in nature.

With the revolutionary technological advancement, we became successful to enter into a modern jet age from the ancient Stone Age. The pushing forward of technology with years has brought a complete turnover to our lifestyles as it has redesigned the approach to our living, our style of communicating with the society, our way of traveling, our procedure of learning and so many auxiliary changes have been brought about by these continuous technological elevations. Automated Teller Machines, commonly known as the ATMs, is a perfect example of technological advancement. However, as we all know, there are two sides to every coin. Although, these technological advancements have many pluses but there are several negatives too. The concept of ATM fraud has skyrocketed in the recent past. The society has transformed in such a manner that nowadays, to have a decent living; one is forced to possess a lot of money. The same concept goes with the thieves' strata as well. To earn a satisfactory livelihood, they will try to steal money by hook or by crook. Now that the positive technology has advanced manifold times, the negatives vibes have also stepped into its shoes and thus the concept of ATM fraud is now spreading like a deadly virus, which has infected a lot of people's money due to which person's right to private money is infringed.

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RIGHT TO PRIVACY AND INTERPRETATION OF ATMs

The Law Dictionary has stated the following definition of ATM: "*A machine that a bank customer can use to access their account after hours with their card and pin. No teller is needed for this.*"⁵

The concept of ATM, also known by the name Automated Teller Machine, came from the mind of Luther Simjian as he introduced Bank graph. But the first ATM was installed by Scottish inventor John Shepherd-Barron in 1967.⁶

The basic idea behind the setting up of these types of machines was to provide ease of access to bank accounts by patrons. Thus it is one of the imperative features administered by banks. But the important point here to be noted is that the banks, whose traces could be found from

⁵ What is AUTOMATED TELLER MACHINE (ATM)?, The Law Dictionary, <http://thelawdictionary.org/automated-teller-machine-atm/>, accessed on 4 September 2017.

⁶ History Staff, Automated Teller Machines, History (2010), <http://www.history.com/topics/inventions/automated-teller-machines>, accessed on 6 September 2017.

the French word 'Banqui' and the Italian word 'Banca', created ATMs for the safekeeping of its customer's money.⁷ But in the recent past, it can be seen that this safekeeping mechanism is proving out to be one of the sources for the infringement of the right to privacy of the customers. When the customer's bank account is being ransacked by a third party, his private access to the account is violated. In the case of **UPSC vs Rk Jain**, it has been discussed that the right to privacy is too broad to be interpreted by the judiciary but one can surely assume it to be an integral part of the right to personal liberty under article 21 of Constitution of India.⁸ The right to privacy is also discussed in Article 12 of the Universal Declaration of Human Rights.⁹ Even Mr. Justice B.P. Jeevan Reddy tried to highlight the main aspects of the right to privacy. According to him, this right is none but the right to be let alone. Any person has the right to safeguard his private life which includes family, marital life as well as livelihood.¹⁰ Thus here comes the role of money in leading a life of dignity and decency. And where a person's private money is being looted by some ATM fraudsters, there comes the role of the society to take respective action against them.

MECHANISM OF ATM FRAUD

The starting process of ATM fraud is bifurcated into two parts, the stealing of ATM card or the tapping of ATM card data. It could be seen that the details of our account can be easily found from the magnetic strip at the back of our ATM cards. To violate our privacy rights, what all fraudsters need to do is to get hold of the magnetic strip of our ATM cards. Now, if a card is stolen, it becomes the easiest way to get hands-on our data and ultimately our money.

The tapping of ATM card data is quite a complicated process. It is nothing but compromising our account data unintentionally to the thieves. In an ordinary process, a customer would visit an ATM and would carry out his/her transaction. He/she would consider the transaction to be safe and sound. But the trick here is that the fraudsters had already installed a machine where the customer swipes his/her ATM card. That machine creates an illusion to be a normal swiping machine. But in actual, what it does is gathering all the account information which is provided by the magnetic strip of our ATM card. Another process to tap data is through siphoning off

⁷ Smriti Chand, Banking: The Evolution, Origin, and Growth of Banking, your article library, <http://www.yourarticlelibrary.com/banking/banking-the-evolution-origin-and-growth-of-banking/10998/>, accessed on 7 September 2017.

⁸ UPSC vs Rk Jain, W.P.(C) 1243/2011(Delhi High Court, July 13, 2012)

⁹ Universal Declaration of Human Rights, un.org, <http://www.un.org/en/universal-declaration-human-rights/>, accessed on 5 September 2017.

¹⁰ See *Supra*, 8.

the data using hoax calls. Hoax callers pretend to be bank employees in front of the customers and usually ask for the ATM pins or card CVV numbers.¹¹

The twist here is that unlike the stolen card, where the card owner is aware of the fact that his card is lost and thus may immediately give a call to the respective bank to cease all his account transactions and thus block his card. In tapping of the card data, the card owner is unaware of the fact that all his account details are now shared with the third party. Thus what the third party does is store all the information for a few days and then take the step of infringing the right of the customer. By following this path, the fraudsters try to suppress the cause or origin of crime. Several instances have been reported in the recent past about ATM frauds. It has been seen that in the recent past the banks have tried to take measures by changing the security codes of ATM cards but in most cases of ATM frauds, the recourse has either been lengthy or absent.¹²

CONVENTIONAL METHOD TO COUNTER FRAUDSTERS

The concept of ATM fraud has spread like a fire across the nation. Although the concept is still at its early stage the fact that it is dangerous for the banking sector would not let the same sit at peace. As Newton has said: For every action, there is an equal and opposite reaction. Similarly, ATM frauds have led to the arousal of various counter methods to tackle fraudsters. Banks have from time to time tried to solve this issue by taking appropriate steps. The most conventional among them is giving certain security warnings to its customers related to changing the pins of their ATM cards. It has been reported that HDFC Banks have sent messages to its customers stating that there is an urgency to change the ATM pins because of certain security measures.¹³ This SMS was one of the consequences of several instances that have been listed in the recent past. In another case, Hindustan Times has reported that the country's largest bank, i.e. State Bank of India has already blocked 600k ATM cards to change the security codes.¹⁴ The step has been taken to prevent a breach of the right to privacy. From time to time banks have tried to enlighten the present generation and also to make them aware

¹¹ Suchetana Ray, Amid debit card security breach, victims of ATM frauds tell their tales, Hindustan times (Oct 20, 2016, 15:43 IST), <http://www.hindustantimes.com/business-news/amid-debit-card-security-breach-victims-of-atm-frauds-tell-their-tales/story-U07qVRITw7OHZBaKIKLIXM.html>, accessed on 7 September 2017.

¹² *Ibid.*

¹³ Banks ask customers to change ATM PIN, the times of India (Sep 17, 2016, 04.00 AM IST), <http://timesofindia.indiatimes.com/business/india-business/Banks-ask-customers-to-change-ATM-PIN/articleshow/54371018.cms>, accessed on 7 September 2017.

¹⁴ See *Supra*, 11.

of such fraudsters. Thus the repression by the bank in itself was considered to be well established and accepted measure to counter the fraudsters.

COUNTERING THE DILEMMA: A FLIPSIDE

ATM fraud in this 21st generation is like a parasite from which we cannot be rescued easily. The wound caused by the loss of our private money has affected us to an extent. Indeed, the money isn't everything but here there is a violation of a fundamental right which is being constantly ignored by the authorities. The challenges these fraudsters have thrown to us are the matters which need to be worried upon. These scammers are one step ahead always. When it happens once, it may be an accident, but when the same incident is repeated, that becomes symptomatic of a pattern. However, the most important thing which needs to be looked upon is that what should be our action plan for the future. Since the primary concern of the banks and the government was to combat these fraudsters, little thought was given to the preservation of the right to privacy. Although the defensive and precautionary measures used by the bankers were right to some extent it was the general public who were utilized as a scapegoat. The main objective of every state is to retain human rights and promote these as well. But while tackling tricksters, it is the rights of the humans that are always wretched up. It is at this point that the concept of alternative methods to counter ATM fraudsters becomes of utmost importance.

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➤ **Individual Temperament**

"Conquer your mind, and conquer the world."¹⁵

Guru Nanak Dev Ji, the first Guru among the Sikh Gurus, has rightly conveyed the message of '*man jeete jag jeet*' through his famous writing, '*Jap Ji Sahib*'. The mind is perhaps the most vital component in this world. Our thinking, our approach, and feeling towards life is all dependent upon how our mind reacts. It is the life which throws out several problems towards us. But how we react to those problems is all that it matters. Thus each person should have a positive temperament towards life. People should boldly tackle the acts of those fraudsters.

The main aim of those bandits is to infringe on the privacy right of yours. What common man needs to do is to be aware of his surroundings and try to annihilate these fraudsters. Mere working of banks and the government is not enough to quash these robbers but every individual

¹⁵ Guru Granth Sahib Ji.

is accountable for the same. At an individual level, what a commoner can do is to regularly check bank balances and shall avail all the transaction notifications being provided by the banks.¹⁶ If one has fallen into the trap of ATM fraud, then one must keep his head cool and shall immediately approach the respective bank. But one should be aware enough as to not fall as prey of those fraudsters. Extreme scrutinization is required. Everyone must keep their eyes open and make sure that the transaction which they are going to conduct from the ATM is safe and sound. And if any damage to the ATM is visible by the individual, he/she must not transact from that machine and even for the safety of other individuals, he/she must report the same either to the police or to the respective bank from which the ATM belongs to. Also one must not take any sort of help from strangers. If one is facing any sort of problem while conducting the transaction and wants to cancel out the process then one must make sure that the process is completely canceled before coming out of the ATM room.¹⁷

Lazy nature of the commoners often feeds fraudsters. The commoners must cultivate a sense of awareness and activeness amongst themselves. Being commoners, we should organize some events where the young generation and adults can get aware of the process of ATM tampering. It has thus been rightly said by Aristotle, *"The ultimate value of life depends upon awareness and the power of contemplation rather than upon mere survival."*¹⁸

➤ **Macro-Sociological Approach**

*"Individual commitment to a group effort - that is what makes teamwork, a company work, a society work, a civilization work."*¹⁹ - Vince Lombardi

Society is nothing but an aggregate of people living together as a community. Since the concept of ATM fraud is a headache for the majority section in a society, thus unification of all the society members is another alternative to counter these fraudsters. Adopting a macro-sociological approach will not only blot out these bandits from society but also it will

¹⁶ Constance Gustke, 4 tips to protect you from ATM thieves, Bankrate, <http://www.bankrate.com/finance/savings/4-tips-to-protect-you-from-atm-thieves-1.aspx>, accessed on 8 September 2017.

¹⁷ Sandeep Singh, ATM frauds: Safety lies in your own hands, indianexpress(June 24, 2016, 3:04 am IST), <http://indianexpress.com/article/business/business-others/atm-fraud-skimming-racket-atm-atm-security-2872378/>, accessed on 8 September 2017.

¹⁸ Aristotle, Awareness, Brainyquote, https://www.brainyquote.com/search_results.html?q=awareness, accessed on 8 September 2017.

¹⁹ Vince Lombardi, Society, Brainyquote, https://www.brainyquote.com/search_results.html?q=society, accessed on 8 September 2017.

rejuvenate the faith upon ATMs by the members of the society. If there is proper unification in society then it becomes the most powerful weapon to sort out any problem in society.

A society should not only be looked at from the micro aspect but the macro aspects should also be taken into consideration. As a macro-sociological approach, one should actively take part in every societal matter which will ultimately help one to get aware of different concepts like Keypad Jamming Fraud, Card Swapping Fraud, Skimming, etc. Even though one is in no mood to conduct any transaction from a particular machine but as a prudent man, one must report to the police if any suspicious activity is going on around that particular ATM.²⁰ An NGO or any awareness campaign can be started by a group of members of the society to make everyone acquainted with the do and don'ts of ATM transactions.

It could be seen from **C.B.I. vs Maninder Singh** case that ATM fraud has been commented over as a public offense and these are the crimes committed by intelligent criminals against the society. Further, it has been stated that the magnitude of the crime falls upon the society and thus it ultimately infers that the punishments of those criminals should also be decided by society.²¹ Thus, in a nutshell, one must give up the selfish nature and should join hands to combat this virus which affects everyone's right to privacy.

➤ **Accountability Mechanisms**

The accountability mechanism narrates the gaps available in the governance of the state as well as in the functioning of the banks. A society can be judged as a good one or a bad one only based on whether the government is effective there or not. From the very beginning, it is visible that there is always a bend towards ad hoc responses by the government.²² But it could be noticed that ad hoc responses are not very effective in countering any problem. This is so because these responses vanish up once the problem gets over and thus there is no space for the betterment of these responses. Instead, setting up of well-established institutional mechanisms and fully tested drills along with the collaboration of banks would be more beneficial in nature as the vacancy for improvement will arise as soon as the problem gets over.

²⁰ See *Supra*, 17.

²¹ **C.B.I vs Maninder Singh**, Criminal Appeal No. 1496 OF 2009(Supreme Court of India, Aug 28, 2015)

²² Shyam Saran, Fix Governance Gaps Right Away, Hindustan Times, January 6, 2016, at 10.

These well-established institutions should consist of two complementary functions: problem-solving functions and compliance review functions.²³

As the name suggests, the problem-solving functions should work upon the problem or the incident of ATM fraud. According to this function, the established institution must take an adequate and mandatory step if any incidence of ATM fraud has been reported somewhere. It must find satisfactory solutions to the problems which have been caused by the fraudsters. On the other hand, the compliance review function should look into the causes and reasons of that crime and should see whether the government has been effective enough or it has to go through some amendments. The establishment of a problem-solving function would lead to freedom from the responses arising out of particular incidents of ATM fraud. Whereas the compliance review function would make sure that our privacy right is in safe hands. These two functions should work in complementary to each other as these would not only counter the ATM fraud mechanism but also will exhilarate our privacy right.

In addition to these well-established institutions, banks should try to formulate a mechanism wherein an option of speedy recovery is available to the customers who have fallen into the trap of the fraudsters. Also, security guards in the ATM rooms must look into the matter and should always be fully aware of any ATM tampering being done. Thus an effective Accountability Mechanism is an elemental mechanism to the equitable and sustainable development of the society.

➤ Normative Shift

Norms are the benchmark of group behavior. It is a psychological concept that is based upon what is considered to be a normal or right way to do something in society. Have you ever wondered what all things force the fraudsters to choose this option? Or have you ever given a thought upon why the criminal acts always took place in our society? The answer to all these questions lies in the behavioral aspects of society.

The main aim of every human being is to live a life of respect and dignity. As the author has stated earlier, he needs money to fulfill all his basic amenities. Now it is possible that in society some people are considered as downgraded aspects by the rest of the society members. Since

²³ Accountability Mechanism, Asian Development Bank, <http://www.adb.org/site/accountability-mechanism/main>, accessed on 8 September 2017.

every man wants to live his life respectfully, hence to take revenge from the society he will take the road not taken by the commoners and will thus ultimately be classified as a criminal. Further, the behavioral aspect of society has a multiplier effect as well. Once the person is declared as criminal by other society members, all his acquaintances would also be judged in the same manner. Conclusively, this will result in the admittance of more members in the world of crime.

Martin Luther King Jr. once said, *'It is incontestable and deplorable that Negroes have committed crimes, but they are derivative crimes. They are born of the greater crimes of the white society.'*²⁴In this case, one can say that the condition of the ATM fraudsters is the same as that of Negroes. Furthermore, it is the psychology of the society that has deteriorated a faction of human beings which have ultimately converted themselves into criminals. Thus a shift needs to be brought up in society. A shift of positive push needs to be generated. And for this positive shift, norms of the society must be amended. It is the principle of the socially equitable economy that needs to be brought up in the society. According to this structure, no one should be mentally discriminated against on the grounds of economy and status. In this way, a normative shift can reduce the number of criminals which will ultimately reduce the instances of ATM fraud.

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ATM FRAUD: AN INSIGHT VIEW

*'Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family.'*²⁵ -Kofi Annan

Eliminating crime from society is the battle of education. Suppression of these ATM fraudsters by the government or the banks will not completely eradicate the problem of this type of crime. Rather these criminals will find another way to infringe the privacy right of the commoners. Education, a nationwide accepted norm to elucidate any problem, will also prove to be beneficial in this aspect as well. Education inculcates the feeling of brotherhood in the minds of people which will prove to be a boon to society. Most of these criminals are jobless as well as illiterates, and thus to earn a decent livelihood they forcefully have to take this path. But if

²⁴ Martin Luther King Jr., Crime and Society, Brainyquote, https://www.brainyquote.com/search_results.html?q=crime+and+society, accessed on 6 September 2017.

²⁵'If Information And Knowledge Are Central To Democracy, They Are Conditions For Development', Says Secretary-General, un.org(June 23, 1997), <http://www.un.org/press/en/1997/19970623.sgsm6268.html>, accessed on 6 September 2017.

all the people in the society are provided adequate education as well as a decent job, then there would not be any chance left for this type of crime to emerge again.

The absence of education pushes the generating era to affiliate with the anti-social elements. There is a crucial requirement to stitch favorable circumstances for people so that they can educate their children. To move forward on this path, the government must provide a head start to it. Good and qualitative basic education must be provided by the government. While Article 21A of the Constitution of India talks about the right to education which is available to the masses at free of cost.²⁶ Nevertheless, the quality of education provided by the education is not up to the mark. Therefore, the government needs to work on it. A civilized and sustainable environment would also assist in eradicating ATM crime from its roots. A good number of educational institutions must be set up in society. Libraries must be well-built as well as taken care of in every city. However, the concept of education must not be restricted to the theoretical area only. Thought must be given towards the advancement of vocational education as well. Vocational education will not only teach the young generation of society but also will provide them the opportunity to earn a decent livelihood. In this fashion, at the end of the day, it is our right to privacy which will be guaranteed by society.

The process of socialization, the most vital process for the development of an individual, can also prove to be a clairvoyance view for eradicating crimes like ATM fraud. Socialization is that practice that converts a living organism into a social being.²⁷ The person learns the art of values and cultures from the various social groups and thus behaves according to what he has learned. All that it matters now is the role of various social groups in the life of the individual. If the individual is surrounded by good social groups, then he is likely to become a boon for society. And if he is encompassed by a bad group, then the consequences might be dreadful for the society.

The main role in this situation will be played by the very primary social group members, i.e. parents. The duties performed by the parents will be of paramount importance. Religion, on the other hand, should preach the ideals of peace and tranquillity among human beings. For someone who is properly socialized as well as educated with hundreds of opportunities in front

²⁶ The Constitution (Eighty-Sixth Amendment) Act, 2002, Article 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

²⁷ Samiksha S, Socialisation: The Meaning, Features, Types, Stages, and Importance, Your Article Library, <http://www.yourarticlelibrary.com/sociology/socialisation-the-meaning-features-types-stages-and-importance/8529/>, accessed on 8 September 2017.

of him, why would he choose the path of infringing the rights of other people? Thought must be given to this fact.

CONCLUSION

The right to privacy is a vast concept and its boundaries are generally undefined. 'ATM Fraud: Unfolding a New Magnitude of Right to Privacy' is indeed a concept expanding the scope of our privacy rights. Countering ATM fraudsters as well as protecting our right to privacy is not paradoxical concepts but work in complementary to each other. The mechanisms or the solutions provided by the government along with the banks are unquestionably the good ones but these are not sufficed with the present times. Thus, an attempt has been made by the author to unfold a new magnitude of our right to privacy stating a clairvoyance view of the concept. The concepts of education, awareness, and socialization assume the role of the pilot where they have to steer mankind out of the deadly world of crimes. Changes begin right from our home. So let's change us first then only we can change the world. We have a long path to go but we'll have to start someday. We shall tower above our past.



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