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Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

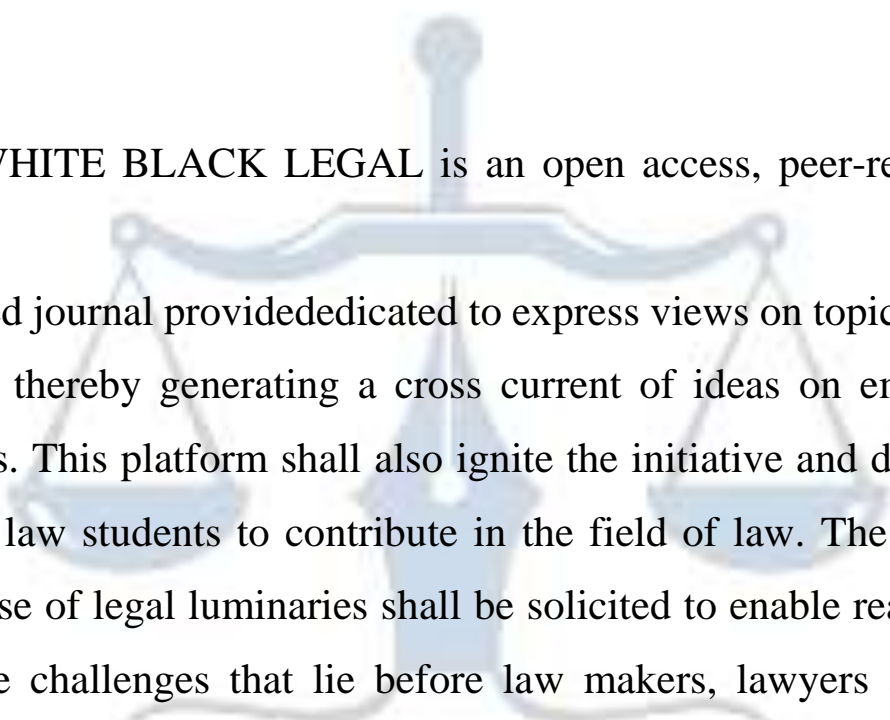


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INVESTIGATING THE ROLE OF CONSUMER COURT AND BANKING OMBUDSMAN IN RESOLVING CARD FRAUDS

AUTHORED BY - MS. K. R. HAMSA PRIYA

L.L.M (pursuing)

The Tamilnadu Dr. Ambedkar Law University, Chennai.

CO-AUTHOR - MS.T.VAISHALI

B.A (Eng. lit), L.L.M., NET., Ph.D. (pursuing) Assistant Professor Of Law,

The Tamilnadu Dr. Ambedkar Law University, Chennai.

Abstract:

Card Frauds are growing threat to financial institutions which become pervasive issue in online payment. Customer and also national income will also get affected by card frauds. Thus, to prevent card frauds, banking ombudsman and consumer court role was essentially needed, this article focuses on procedure, process, advantages and disadvantages of banking ombudsman and consumer court, this article identify recommendations to consumer court. Jurisprudence of. Consumer court is effectively discussed with recent cases. It investigates banking ombudsman and consumer court and identify which plays an effective role.

Key word: Card frauds, banking ombudsman, consumer protection.

Introduction:

Consumer courts are the appropriate judicial forums to redress disputes between consumers and service providers including card fraud etc. Though there is huge confusion regarding whether to approach banking ombudsman or consumer court. However, there are certain limitation related to consumer courts as well as banking ombudsman in resolving card fraud issues. Financial institutions and merchants involved in a card fraud incidence provide their own process as a part of which the affected party is provided certain rights such as getting reimbursed for the loss, reporting the offence to law enforcing authorities etc, in addition to

their right of approaching consumer courts. This makes customer feel that though they have reached dead-end at bank level, still they will get justice at consumer court. This article examines the role of banking ombudsman and consumer court in resolving card frauds.

Objective of the research:

1. To examine the jurisdiction of banking ombudsman and consumer court in card fraud disputes.
2. To analysis the ombudsman and courts procedure in resolving card fraud disputes.
3. To evaluate the effectiveness of ombudsman and consumer court in settling card fraud disputes.

Overview of card frauds and their type:

Card fraud refers to unauthorized or illegal use of a credit or debit card to make fraudulent transactions. It involves stealing card details to access someone else's funds or make purchases without their consent.

Types of card Frauds:

1. credit card Frauds -It is an unauthorised transaction done by stolen credit card.¹
2. Debit card Frauds-It is an unauthorised transaction done be stolen debit card.
3. Card not present – It is a type of fraud where fraudulent transaction made without physical card being presented.
4. Skimming-skimmer is a device used by the criminal which capture data from magnetic stripe present of debit or credit card and use it to counterfeit new card.²
5. phishing- criminals send fake mails, message, phone call like bank and make cardholder to provide their sensitive details about card.³
6. Application fraud – fraudsters give false information while applying for credit card and misuse the card.

¹ Tej Paul Bhatla, Vikram Prabhu & Amit Dua, Understanding Credit Card Frauds.

² <https://datadome.co/learning-center/types-of-credit-card-fraud/>

³ <https://www.synovus.com/personal/resource-center/fraud-prevention-and-security-hub/featured-content/types-of-credit-card-fraud/>

Actions to take in response to card fraud:

1. Immediately notify your bank or card issuer of any fraud: Contact your bank immediately: Cardholders should report any unauthorized transactions to their bank or card issuer as soon as they detect fraud. Most banks offer 24/7 customer service for such issues. Card Blocked: Ask your bank to block your card to stop more fraudulent purchases.⁴
2. File a complaint with the bank. Complaint Registration: Most banks provide a structured process for filing card fraud reports.
3. Check the bank's corruption policy.
 - RBI Guidelines: In India, the Reserve Bank of India (RBI) requires banks to refund customers for transactions. If fraud is reported timely (usually within 3 business days)
4. Record fraud incidents
 - Gather evidence
5. Cooperate in the bank's investigation.
6. Report to the police (if necessary)
 - When to file a report: If the fraud involves a large amount of money or if criminal activity is suspected (such as identity theft or cyber fraud), it may be necessary to file a report.
7. Follow up with the bank or financial institution.
 - Time Limits: Banks generally have a certain time frame (usually 30 days) to resolve fraud complaints. Be sure to follow up regularly to ensure the bank is open during this time.
8. Go to the Bank Ombudsman (if still not resolved).
 - not a mandatory
9. Approach consumer court.

Banking ombudsman

Banking ombudsman plays a crucial role in resolving dispute between bank and consumer including card frauds, It is the first mechanism involved in solving disputes.

Banking ombudsman is a quasi-judicial body was established in 2006 in response to a decision taken by the Indian government to facilitate the handling of consumer complaints about specific

⁴ <https://www.bajajfinserv.in/step-by-step-guide-to-reporting-online-fraud>

services provided by banks.⁵ In India, the Banking Ombudsman Scheme was first implemented in 1995 and underwent revisions in 2002. And now integrated ombudsman scheme 2021 was now used.

Procedure followed in banking ombudsman:

- **Complaint filing** – complaint should be filed in bank regarding the issue, if it is not resolved by the bank then customer can move to banking ombudsman.
- **Mediation and resolution-** Banking ombudsman try to resolve between customer and bank.
- **Time limit-**It try resolve the issue within 45 days
- **Outcomes-** It awards correctional actions by the bank or re-crediting the amount. It offer compensation which is limited in nature.

Where it is necessary to approach banking ombudsman?

No it is not mandatory to approach banking ombudsman before moving towards consumer court. The consumer protection act does not requires to approach ombudsman. It allow us to approach directly If you feel that ombudsman cannot give satisfactory outcomes.

Advantages of banking ombudsman:

- Service is free for customer which makes cost effective to the complainant.
- Procedure for filing complaint in ombudsman is simpler and less formal.
- In case of settlement between customer and bank quick response will be taken.
- Disputes will be resolved as early as possible.

Drawbacks of Banking ombudsman

- Banking ombudsman only take limited categories it does not take international transactions frauds, crypto currency falls Out of the limits.
- It does not take Fraud done by third party. It primary handle the dispute between customer and respective bank.
- It does not address complex fraud cases such as synthetic identity theft, multiple parties involving etc.

⁵ Banking ombudsman scheme Annual report 2004, RBI Rural planning and credit department central office mumbai.

- Decision given by Banking ombudsman is not binding.
- It offers compensation but it is limited in nature.

Consumer protection act 2019:

The consumer protection act 2019 gives its shoulder in resolving card Frauds disputes specifically,

Section 2(1)(d)⁶:It deals about “deficiency in service” which includes service rendered by the bank.

Section2(1)(r): which define “unfair trade practices” which also encircles fraudulent bank service or mishandling debit or credit card security.

Section 3: which provides consumer rights to be protected against unfair market places including bank, frauds etc.

Section 17: It provides the consumer to approach district forum in claim which is less than 50 lakhs which makes feasible for individual cases for card frauds.

Section 21: it provides legal framework to appeal from district forum to state consumer redressal commission or national consumer redressal commission which ensures multiple avenues for redress.

Jurisdiction of consumer court:

Under the Consumer Protection Act 2019, a cardholder who has been a victim of credit card fraud can approach a consumer court for redressal. If the cardholder believes they have been unfairly charged or the bank (or financial institution) has failed in providing appropriate service (such as not resolving fraud complaints), they may file a cases.

According to The Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021,⁷

Jurisdiction of District Commission: The District Commission shall have jurisdiction to entertain complaints Where the value of the goods or services paid as consideration does not exceed fifty lakh rupees.

Jurisdiction of State Commission: The State Commission shall have jurisdiction to entertain Complaints where the value of the goods or services paid as consideration exceeds fifty lakh but does not exceed two Crore rupees.

⁶ The consumer protection act 2019, No,35 of 2019

⁷ Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021

Jurisdiction of National Commission: The National Commission shall have jurisdiction to Entertain complaints where the value of the goods or services paid as consideration, exceeds two crore rupees.

Grounds for complaint:

- i. Adoption of unfair trade practices or restrictive trade practices by the service provider,
- ii. Defective goods,
- iii. Deficiency in services,
- iv. Overcharging of goods or service,
- v. Selling hazardous goods or service.

Here card fraud cases can be resolved by consumer court on the basis of **deficiency in service, adoption of unfair trade practices.**

Procedure followed in consumer court:

- **Complaint filing** -complaint filed according to the above jurisdiction mentioned, can be in District, State, National commission.
- **Legal procedure** -Unlike Banking ombudsman, it follows several procedure like hearing, investigation, evidence, cross examination etc.
- **Time frame** – It takes about 7 months to years.
- **Outcomes**- It is legally binding, it gives punitive action, compensation, direct banks to reverse charges.

Consumer courts jurisprudence:

There are more number of precedents and case laws that shows the effectiveness of consumer court in resolving card Frauds.

Kiran Sethi vs ICICI Bank (2012)

This case was won by the consumer who was fraudulently charged by credit card charges. The court found that there is a negligence on part of bank in detecting and preventing the fraud, it constitutes banks negligence, thus bank was compelled to pay bonus charges and compensate for inconvenience. By this we can understand how consumer court plays a crucial role in resolving card frauds.

State Bank of India vs T. Bhavani (2019)

The case which was handled by district forum ruled in favour of bhavani who was reported fraudulent transaction on their debit card. The court found that banks negligence in safe guarding customer account, thus it awarded compensation to the victim.

Anil kumar vs union Bank of India (2021)

In this case district forum ruled that bank will be liable if it does not prevent credit card fraud. It also ruled that bank should follow certain security protocols and should prevent unauthorised transactions.

By this case law we can understand how effectively consumer court has worked in resolving card fraud disputes.

Recent cases:

1. ICICI Bank Pvt Ltd. Was ordered by the Telangana State Consumer Disputes Redressal Commission (TSCDRC) to compensate a businessman ₹50,000 for illegal credit card transactions. The Commission observed that the bank did not file adequate evidence of the complainant having registered with a payment gateway through which these transactions were made.⁸
2. Karnataka consumer court orders SBI to waive off of Rs. 4.09 lakh transaction, says bank failed to respond to customer complaint in credit card fraud case, A consumer court in Karnataka has ordered the State Bank of India (SBI) to quash the credit card transaction and penalty of a customer, saying the bank failed to respond to his complaint of cyber fraud on time. On August 28, the Dakshina Kannada District Consumer Disputes Redressal Commission in Mangaluru observed in its order that service was deficient on the part of the state-run bank.⁹

⁸ State Consumer Commission orders ICICI to compensate man for unauthorised credit card transactions, pay punitive damages – <https://www.thehindu.com/news/national/telegana/state-consumer-commission-orders-icici-to-compensate-man-for-unauthorised-credit-card-transactions-pay-punitive-damages/article68698203.ece>, For the best experience read this on The Hindu App. <https://bit.ly/THNewsApp>

⁹ <https://indianexpress.com/article/cities/bangalore/karnataka-consumer-court-sbi-order-waive-off-transaction-consumer-complaint-case-9545783/>

Difference between Banking ombudsman and consumer court:

Aspects	Banking ombudsman	Consumer court
Jurisdiction	Handles case against only banks (financial institutions) card frauds.	It handles disputes between banks and any other service providers such as bank, merchants and third party involved in card frauds.
Process	Less formal	Formal
Fees	No such fees	Court fees apply
Time for resolution	30 to 45 days, complex case may be longer	7months to years
Binding nature of decisions	Non binding	Binding in nature
Relief and compensation	Limited	Higher compensation than ombudsman
Appellate body	Deputy governor of RBI	District forum to state commission state commission to national commission, national commission to supreme court.

Superiority of consumer court over banking ombudsman:

By below points we can understand that consumer court's upper hand in redressing disputes,

- 1) In consumer court, redressal authorities at every level, including the national commission at the federal level, the state commission at the state level, and the district forum at the district level. The complainant may even file a complaint with the Supreme Court, the Indian Apex Court, for decision-making if they have any objections to the national commission's order. Where as in banking ombudsman, appeal can go to deputy governor of RBI (appellate authority)
- 2) In terms of original and appellate jurisdiction, the range of redressal is also broad, encompassing district forums, state commissions, national commissions, and supreme courts.
- 3) A bank customer can complain to the consumer redressal authorities about a lack of financial services.

- 4) The complainant does not have to be the only bank client who experienced a banking service failure. The Central and State Governments, bank customers' welfare associations, and other organisations may also designate the complainant as their official representative. In banking ombudsman, only bank customer and their representatives can be complainant.
- 5) The amount of damages suffered by the complaint is also included in the order. In banking ombudsman No such compensation is awarded, it simply intimate to the bank. In integrated banking ombudsman scheme 2021, they provide to give not more than 1 lakh as compensation for mental agony and harassment, which will not be adequate.
- 6) If the consumer redressal authorities order is not followed, the guilty party may be subject to penalties. No penalty in Banking ombudsman.

Thus, banking ombudsman can be used when the simple case of card frauds and when you are not looking for complex legal redressal and large compensation the you can approach ombudsman. But if fraud involves in higher amount and in complex nature consumer courts role is necessarily needed .in which compensation is high and punishment will be awarded.

Recommendation:

- a. Consumer court should bring strict timeline in resolving issues (like 3 months)
- b. Public awareness should be given, bank should clearly inform about security PIN, 2 factor authentication etc to card holder.
- c. Their should be experts in consumer court in investigating card fraud cases.
- d. There should be independent fraud investigation wing followed under consumer court guidelines.

Conclusion:

Thus consumer court offer more efficient resolution in solving card fraud rather than banking ombudsman, though Banking ombudsman is quick and less formal it can be used if value is less ,but consumer court is a superior choice in as it has broader jurisdiction and compensation is awarded .If above mentioned recommendations are made out then consumer court will be working more efficiently than now .

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