

ELECTRONIC AND MOBILE PAYMENTS: LEGAL ISSUES?

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ABSTRACT

The present Research Paper aims to find out the legal issues related to the electronic transactions. With the passing of time, the economy of our country is heading towards the transformation of a cashless economy. Payments are being made through mobile phones over the internet instead of cash. IT of our country has also shown a major growth in formulating new and innovative technologies for cashless payments. The mobile wallet companies have attained huge profits due to such procedures of transactions/payments. Also, as an initiative, the govt. promotes cashless economy and encourages digital mode of accepting payments to various merchants through a number of online payment portals.

But when it comes to safety and security of customer's data, to what extent these of transactions are safe? Are they end-to-end encrypted while making a payment? Is the transaction ID confidential? Are the bank accounts totally safe online? Are there no privacy risks? No, the safety is not a priority here and it can generate legal issues.

The core motive of this paper is to find out the risk factors of electronic transactions and analyze the legal issues associated with them. To convey the same, various charts and graphs relating to current scenario have been used and each and every segment of IT, the legal matters as per mobile payment has been thoroughly discussed here.

INTRODUCTION

Research Content

¹When a product is purchased by a buyer or customer, he is required to give consideration for that product in the form of monetary payments. Earlier, in ancient time, barter system was carried out and after that these payments once used to be only in the form of cash where an individual having a bank account was required to withdraw cash from his debit card using ATM and use that cash for his expenditure.

But the scenario in the present era is not at all identical. The process of cash payments has slowly faded away and our economy has almost become a cashless economy. The process of digital payments saw a huge boost from the year 2016 when the prime minister of India announced demonetization of all Rs. 500 and 1000 bank notes in the country's economy. Now, talking about the new form of payments, it is often termed as **Electronic/Digital** payment and also **Mobile** payments.

It is really a big revolution that in the present time any payment can be completed just in seconds. Electronic payments often called **E-Payment** refers to the form of payment where an individual pays for a good or service over the internet using electronic devices such as; tablets, smart phones, or computers instead of paying cash. And mobile payments are payment services which are operated by the financial regulations given by the Government where the customer uses his phone to make payments instead of other traditional payment methods such as cheque and debit/credit cards. The Information Technology has given opportunity to the people of our country to carry out payments right from their mobile phones. This has also given rise to the "Mobile Banking System." In mobile banking, one uses his mobile phone to carry out all such activities which he is required to do in a physical bank, he can buy anything of his need online

¹ <https://techcrunch.com/2016/06/17/the-evolution-of-the-mobile-payment/>
<https://business.ebanx.com/en/resources/payments-explained/e-wallets>
<https://www.calpnetwork.org/publication/standards-and-practices-report-for-electronic-and-mobile-payments/>

and make payments also digitally using his mobile phone without carrying physical credit/debit card or physical money in the form of cash. Money can also be transferred from one bank account to another in seconds by just using a mobile phone

One can also check his bank balance, do investments, and do a lot of online purchases using his mobile phone. Mobile banking can be used by the customers of any bank or financial institution and to carry out this process, an internet connection is mandatory criteria required. There are various mobile apps available which help to carry out mobile banking and totally forget the traditional process where one had to go to a physical bank to carry out such activities.

But the biggest question mark here is that, can a legal issue arise from these procedures? The security and privacy of these customers in all kinds of electronic payments are always questionable. Not only in India, but also on an international level, mobile payments have widened their scope. It is reported that over the past ten years, mobile payment systems have revolutionized in various other countries such as Africa. The technological advancement in the IT sector has laid down numerous technologies which have been shown hike in effectuate banking transactions using mobile phones. This growth also attains reasons from confidence customer shows on these technologies. The financial services of mobile phones are mainly divided into; Mobile banking, and this makes it essential to establish proper legal regulations. The chances of legal issues arising here mainly revolves around data security of customers and the consumer protection

Research Design/Structure

The research designed carried out here is mainly explanatory in nature and carried out in a well explained and easy to understand manner. Also the regulations relating to the topic is very well analyzed. It is designed in a way that the reader does not need to have a deep or previous knowledge on the matter, since the concepts and definitions are offered in order to deliver an easy-to-read research and provide awareness of the topic's relevance.

To finalize and as closure section of this work, relevant conclusions are presented and elaborated.

WORK PROCESS OF ELECTRONIC AND MOBILE PAYMENTS

A digital payment system consists of a few channels through which an outline transaction gets completed.

Today, we have choices with us regarding digital payments such as:-

- ✓ Internet Banking
- ✓ Mobile Wallets
- ✓ Debit/Credit Cards
- ✓ UPI (Unified Payment Interface)
- ✓ Aadhar Enabled Payments

²Now, let's discuss about the players here:-

- a) First, there's of course the bank which provides customers with payment cards such as debit and credit cards.
- b) On those cards, one can find the logo of at least one payment system also known as payment scheme. Bank contact is one of them.
- c) The main role of the payment scheme is to set the rules of each player involved in the payment process.
- d) Only when the player meets all the payment schemes requirements, they can become an official player in the payment process.
- e) One can pay by card using different means as long as they follow the payment schemes rules such as; payment terminals, ATMs, pay pages, web shops, vending machines, and much more.

² <https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works>
<https://www.emerchantpay.com/insights/everything-you-need-to-know-about-mobile-payments/>

- f) If one needs to pay in a store then terminal providers such as “World Line” is involved.
- g) They lease, sell, and install payment terminals in stores.
- h) And if one wants to pay online then one can go through a payment service provider who hosts web shop payment pages called payment portals such as; PayU, RozarPay, and offers a selection of payment schemes to choose from.
- i) Another indispensable player is acquirer such as; world line.

The acquirer ensures a safe connection between terminals or pay pages and the bank and makes sure the merchant is paid.

First, the card should be inserted in the payment terminal in a store or in a card reader for an online payment

The terminal or card reader now checks two things; is the card valid? & which payment scheme is selected? The terminal or card reader then transfers the necessary information on the chip of the bank card to be acquirer. Then the acquirer delivers the payment request to the bank all according to the payment schemes rules.

The bank now checks the following:-

- Is the pin code correct?
- Does the account have sufficient balance for the requested payment?
- Is everything secure?

If these three things are ok, then the payment is accepted but not yet completed. Several times a day, acquirers and banks exchange information to credit the merchant’s bank account. During the payment process, the money is almost immediately debited from the card holder’s account but it doesn’t show straight away in the merchant’s account. Payment transactions are processed in bulk every few hours. The mobile payments also have similar procedure. They involve the same players and follow the same rules, the only difference is, one doesn’t even require a card to pay. Just scan the QR code and the bank contact app code known as UPI code and it’s done. It is the easiest process and can be carried out using the same device which was used for shopping. One just needs to select the bank contacts app as the payment option, enter the pin code and it’s done.

As we see, there are many players involved in electronic payments. Together they strive to make payments easy, quick, and secure.

THE INCOME TAX ACT, 1961

The Government of our country has adopted various methods to promote cashless economy. One such method holds its place in **Section 269SU** of the **Income Tax Act, 1961**. Under this Section the Govt. encourages digital modes of accepting payments. Such as, certain electronic modes and the additional prescribed electronic modes under this Section of the Act. This provision was made applicable from January 1, 2020.

Applications

³This Section shows its applicability to the HUF, Company, LLP or having any other status. An enterprise engaged in B2C business model also comes under its applicability. Also an enterprise which is 100% export oriented. And the foreign companies who are carrying on business through permanent establishment (PE) in the country of India

Prescribed electronic modes of payments

This Section prescribes certain modes of electronic payments. It is compulsory for all the businesses falling under this section to provide these electronic payment modes to its customers.

The additional modes of payments given for the purpose of Section 269SU was given by inserting new **Income Tax Rule 119AA**. Such payment modes are:

Debit Cards powered by RuPay

³ <http://legislative.gov.in/sites/default/files/A1961-43.pdf>
<http://www.bareactslive.com/ACA/ACT607.HTM>

The National Payments Corporation of India (NPCI) had launched a card scheme known as RuPay on March 26, 2012. This was done to fulfill the vision of domestic, open, and multilateral system of payments. RuPay is used in all banks and financial institutions of India and the co-operative banks of the country except the banks of private and public sector.

Unified Payments Interface (UPI) (BHIM-UPI)

Simple, easy, and quick can be made using UPI through a payment app called Bharat Interface for Money (BHIM). Direct bank payments can be made using UPI ID with the BHIM app.

Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code)

It is a P2M (Person to Merchant) mobile payment solution. It is derived from NPCI, visa, and master card payment networks. Here, the cardholder just needs to scan the QR code at the merchant's store and then select the card for payment. Once the payment gets successful, a notification of successful transaction is received in the mobile app of both the card holder and the merchant.

BRILLOPEDIA

CURRENT CONSUMER PROTECTION CONCERNS REGARDING MOBILE PAYMENTS

⁴While making mobile payments, there is a huge lack of awareness regarding the rights and obligations among the consumers. The core reason behind this is the involvement of number of parties in this process namely; financial service providers, mobile operators, internet service providers and also social media. It has been noted by the Organization for Economic Co-operation and Development (OECD) that the consumers find it difficult to determine their rights which depend both on the payment mechanism and the device being used such as; differences

⁴ <https://www.oecd-ilibrary.org/docserver/5k9490gwp7f3-en.pdf?expires=1612169234&id=id&accname=guest&checksum=153351CE3EA7633F5CD06440DC450B77>

when using a fixed computer and a mobile. It is also a difficult task to find out the party which may be responsible for any problems which can arise in the transaction process, the procedures for seeking redressal on the same, and the types of remedies which can be obtained from it. Some other concerns relate to the terms and conditions which are too complex sometimes and the payment related information which may be inconsistent.

Data Protection

Often internet users fear to use online payment services due to the stress of revealing too much personal data online. This lack of trust in consumers related to data protection online takes its reasons from; reports on bugs, new viruses and other cyber threats. According to some reports; 15% of cyber attacks penetrate corporate networks or enterprises. They destroy various IT devices such as servers, storage devices, routers, etc. It takes 8 months for the detection of data breach according to industry estimates. These cyber-security breaches have massive financial, reputational and legal implications for a business, still not all of such breaches are revealed in public. Tracking and geo-blocking are examples of data protection risks involved in e-commerce. When a mobile payment is made, a considerable amount of personal data such as; geographical location, passwords, and payment transaction information gets transferred and these information can be assessed by the mobile operators, app developers, payment processors, and merchants. There are parties that can gain illegal access to that data during the payment process. Here arises a problem because the consumers are not aware about how their data is stored, processed and used. They should have control over this data.

Cyber-Security and Fraud

There is an urgent need for the continuous evolvement of cyber-security because of the constant development of new techniques for fraud and phishing scams which give access to the sensitive consumer data. There are frauds like; fake shops processing fake products online.

Cyber criminals are widening their scope and leading towards targeting cloud services. One of the most common methods for stealing data and money are the attacks on mobile payments through malicious links and applications.

Lack of interoperability between different mobile payment options

Technological advancement has given a wide variety of option for mobile payments, this creates lack of operability between the service providers. If this operability would be better, the consumers could have got more flexible payment options. The independent development of mobile phone technology in Japan which was incompatible with foreign standards is an extreme example of lack of inoperability.

Unfair commercial practices

There is a specific legal criterion to access the legality of commercial practices as said by the **Unfair Commercial Practices Directive**. How far a commercial practice is fair or unfair is determined through an average consumer. A recent case came up where a certain in-app purchases were advertised as free. Misleading advertisements are also an example of unfair commercial practices. Hidden payment obligation also comes under this category.

⁵LEGAL ISSUES ARISING FROM ELECTRONIC AND MOBILE PAYMENTS

Participants

Payments and transactions through mobile phones and other electronic gadgets have led to the collaboration of different industries and resulted in numerous participants. These participants are; customers, merchants, ISPs, TSMs, mobile network operators, financial institutions, issuers of mobile electronic money and payment gateways. These participants have differences in their

⁵ <https://www.financierworldwide.com/legal-issues-surrounding-mobile-payment-transactions#.YBe9ttIzbiU>
<https://www.lawtechnologytoday.org/2018/09/online-payment-services/>

interests and this often leads to conflicts which require legal solutions. In an unauthorized financial transaction, regulatory liabilities of these participants is very important. **Electronic Financial Transaction Act** entered into force in South Korea on January 1, 2007. One of the main purposes of this Act is to ensure the reliability of electronic financial transactions by clarifying their legal relations.

Electronic Communication used for Mobile Finance

Electronic communication is carried out in the form of data messages. There are certain laws which govern electronic communications. They regulate the legal recognition, form, error, time and place of dispatch and receipt regarding electronic communications. The most important instruments which cover such issues are; **“UNCITRAL Convention on the use of electronic communication in international contracts.”** and **“UNCITRAL model law on electronic commerce.”**

Electronic Credit Transfer

There are various types of electronic credit transfer which need to be executed to fulfill mobile financial transactions such as; transfer from credit card company, issuer of mobile electronic money for mobile network operator to merchant and transfer from bank.

Legal issues such as; time to execute credit transfer, revocation and completion of credit transfer need to be discussed. These issues are covered under **“UNCITRAL model law on international credit transfers.”**

Unauthorized Financial Transaction

Liability issues

In the process of completion of and mobile transaction, customers may suffer any kind of loss, reason being an accident arising out of forgery or alteration of information used in such

transaction. This gives rise to the liability issues. Who should be held liable for the loss? The financial institution? They are also liable even when the loss occurred due to negligence on the part of the customer. Or the independent TSM, mobile network operator and issuers of mobile electronic money are liable.

Liability of Financial Institution

Though the financial transactions are completed in a non-facing and automated manner, it is impossible for the customers to prove negligence on the part of financial institution. But they can be held liable as they determine the authentication procedures and implement them until and unless they prove the negligence on the part of the customers.

Liability of Mobile Operator

As the transactions take place with the help of mobile operators over the internet connection, there may be cases losses may occur because of the mobile operator. Here the customers should ask compensation for the damages from the financial institution and they may then prove negligence on the part of the mobile network operator.

Liability of TSM

Many a times, finance related business entities providing credit card services may be liable for losses. TSM can be considered as a subsidiary mobile financial business operator.

Loss or Theft

It is desirable to decide if mobile electronic money needs to be treated separately and provide clearly when the financial institutions become liable in case of loss or theft of a mobile device equipped with mobile finance.

Duty to secure Safety and keep Confidentiality

To improve and achieve sound development of mobile finance, it is important to ensure security and reliability of mobile financial transaction. It would be desirable to impose duties to secure safety and keep confidentiality to financial institutions.

CONCLUSION

There are many technologies relating to Electronic & Mobile Payments/transactions which have drastically failed and have been discontinued. They have been successful in Asia especially in South Korea, Japan, Singapore, and Hong Kong. This is the core reason behind unifying the laws regulating the mobile finance in the recent times. Things took a turn when the USIM-based application came into service. Financial industry is growing due to these technological advancements such as; tap & pay (where the customer just needs to tap hi mobile phone on the NFC tag in merchant's store) has been become very popular. The global markets including various countries are adopting mobile finance solutions such as; mobile banking; mobile credit card, mobile electronic money and direct mobile billing services.

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As the digital transactions are automated and there is no direct contact, it is very essential to strengthen the liability of financial institutions such as banks or credit card companies as well as mobile financial business operators or subsidiary mobile financial business operators such as; mobile network operators, mobile electronic money, TSMs, and payment gateways.

To for the laws of electronic and mobile transactions stronger, it is also a necessity to unify the regulations on mobile finance while defining numerous mobile finance solutions to make a clarification of which regulatory framework apply to them. Further, it is also a very essential step to set up provisions on qualification and supervision to treat such things separately as mobile financial business regulators are not regulated by the traditional regimes. Thus, Electronic &

Mobile transactions should grow but along with laws which provide stronger regulatory framework to deal with the legal issues arising from Electronic & Mobile payments.

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