CHAPTER IV

PROCESS OF LIBERALISATION AND DEVELOPMENT OF E-BANKING

4.1. Introduction

Economic liberalization is a very broad term that usually refers to fewer government regulation and restrictions in the economy in exchange for greater participation of private entities. Liberalisation includes greater efficiency and effectiveness that would translate to a bigger pie for everybody. Thus, liberalisation in short refers to the removal of controls and encourages economic development.¹

Liberalisation refers to a relaxation of government restrictions, usually in areas of social or economic policy. The global process of economic integration comes close to the popular notion of economic globalization.

Globalization can be defined as the free movement of goods, services, labour and capital. Thereby there is no discrimination between nationals and foreign investors and also nationals working abroad. Economically speaking there are no foreigners.² The political process of globalization through the reduction of legal barriers is the essential precondition for setting in motion the economic process of globalization.³

The political component, i.e. the elimination of artificial legal obstructing financial flows, services and institutions is an essential but not sufficient condition of international financial integration.

Liberalisation is not an easy process. Governmental intervention with many restrictions in the guise of protection to its nation hampers it. Government intervention may take the form of restrictions on Foreign Service firms, access to local markets, restrictions on personnel and discriminatory licensing regulations, among other protective measures.

These measures act as non-tariff barriers\(^4\) (NTBs) to trade in the service sector. NTBs reduce the efficiency of the service sector, distort competition among service industries of different nations and because of the synergistic relationship between goods and services, introduce cost distortions in the flow of goods trade.

### 4.2. Liberalisation of Services

The contracting parties to the General Agreement on Tariff and Trade\(^5\) (herein called as GATT)\(^6\) for the first time, focused on liberalizing trade in the service sector during a ministerial meeting held at Geneva on November, 1982.

The definition of trade in services under Article 1 of the General Agreement on Trade in Services\(^7\) (herein after called as GATS) includes the cross border provision of services and their delivery through commercial presence in the host jurisdiction. Trade in service sector is hampered by a number of barriers\(^8\). The elimination or reduction of these barriers is essential to maintain open

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\(^4\)A form of restrictive trade where barriers to trade are set up and take a form other than a tariff. Nontariff barriers include quotas, levies, embargoes, sanctions and other restrictions, and are frequently used by large and developed economies.

\(^5\)Came into force on 1\(^{st}\) January, 1948.

\(^6\)At the end of World War II the international community became aware of the need for closer cooperation to prevent recurrence of the economic difficulties of the 1930’s caused, in part, by excessive protectionist practices. The United States took the initiative in having the United Nations draft a charter for an International Trade Organization.

\(^7\)Came into force on 1\(^{st}\) January, 1995.

\(^8\)Barriers are Tariff Restriction, Quota Restrictions, Transfer of Technology, Transportation and Non-Tariff Restrictions.
trading system the GATT has strived to create. While liberalisation of trade in goods has preoccupied the international community for over many years, liberalisation of trade in services is a relatively new concern. This new interest has been spurred by the increasing importance of the service sector in national economies, particularly those of developed countries as well as by the expansion and diversification of international trade in services.\(^9\)

The World Trade Organisation\(^10\) (herein after called as WTO) also proposed liberalisation of trade. It brought with it multilateral rules and disciplines on services for the first time under the GATS.

GATS was a landmark achievement in many respect. It had extended to cover multilateral trading system to trade in services. Approximately one-fifth of the world trade is in service. However, in terms of liberalization, GATS provided only a modest step in ensuring access to service markets.

This was due to the gradual approach to liberalization adopted by Uruguay Round participants, their initial reluctance to offer significant commitments for trade liberalisation and to structural weaknesses in the agreement.\(^11\)

The GATS is primarily a framework agreement consisting of three main elements, namely (i) a set of general concepts, principles and rules applying to measures affecting trade in services, (ii) specific commitments undertaken by WTO members on national treatment and market access and (iii) several sector-specific annex of both a substantive and non-substantive nature. The


\(^10\)Officially commenced on 1\(^{st}\) January 1995.

GATS was a bold and long overdue innovation that provides a framework for continuing reform and liberalisation of services. The GATS offers a valuable mechanism\textsuperscript{12} for overcoming the difficulty of making credible commitments to liberalize.\textsuperscript{13} The liberalizing component of the GATS is found in the specific commitments which apply to the service activities that are listed in national schedules, reflecting the so-called ‘positive list approach’.\textsuperscript{14}

Thus GATS allows for a menu of scheduled measures, with each specific commitment corresponding to a particular sector and particular mode of supply. Commitments may also be made on a horizontal basis, that is, across all sectors. Each specific commitment may also be subject to qualification as to MFN treatment, market access or national treatment. Full liberalisation is guaranteed only when no service trade is listed in a schedule against a specific commitment, indicating that no reservation is placed on that particular measure with respect to market access or national treatment limitations. However, the ability to effectively schedule restrictions as opposed to liberalisation means that locking in liberal situation that exists. The GATS allows for the future imposition of restrictions or the creation of ‘negotiating chips’. This possibility, along with the non-genericity of national treatment, and the sector-specificity

\textsuperscript{12} Through bilateral and multilateral agreements in relation to cross border trade negotiations.
\textsuperscript{14}The generic rules under the GATS are quite limited compared to GATT. Two of the fundamental principles of the GATT most-favoured nation (MFN) treatment and national treatment can both be made subject to qualification under the GATS through exemptions or exceptions. This is also true in case of market access principle which is there in the GATS but is does not appear in GATT.
of market access commitments is felt to have reduced the value of GATS as a liberalizing instrument.15

Article V of the GATS has set out conditions which must be satisfied by economic integration agreements involving WTO members that allow for preferential access to members in service markets. This is done in order to bring consistency in multilateral trading system. This article encourages ‘economic integration’ rather than ‘free trade areas and customs unions’. The same principle is reflected in Article XXIV of the GATT. But the provision of GATS is broader than the GATT as it covers cross border trade and also modes of supply of these services. Trade liberalisation in services means to promote market discipline in the sector allowing participation of private initiative i.e. privatization. A regulatory reform in GATS is nothing but the need to adapt domestic regulation to the new environment in a manner consistent with trade liberalisation.

GATS apply only when a party makes a specific commitment.16 If the States failed to liberalise their service, they have to compensate those derived of benefits. This is how the GATS compels the parties to liberalise their trade in services. And this is relating to the minimum access guaranteed that are less than the status quo in terms of access permitted to foreign services or foreign service suppliers. GATS also discipline domestic markets as an accompaniment to liberalisation.

The GATS approach to accommodate different levels of development was therefore to introduce the concept of ‘progressive liberalisation’, which commitment must be accepted by the WTO members.\textsuperscript{17} The only trouble is the meaning of ‘progressive’ was not defined in the GATS. It was rather felt by GATS, that it was better to adopt ‘progressive liberalisation’ through successive rounds of negotiation. Hence, three models of liberalisation were developed. First was concerned with the maritime and basic telecoms negotiations, second was regarding financial services, a formula approach was developed in this regard, although limited number of countries adopted then and the third was with reference to telecommunication. This took the members to normal approach towards liberalisation and commitment in services.\textsuperscript{18}

The service sector despite the GATS object of encouraging progressive liberalisation is viewed as a lagging sector and a drag on the economy.\textsuperscript{19} Services are \textit{ubiquitous}\textsuperscript{20} in a modern society; they are multidimensional and play a crucial role in economic development. Services encompass many different economic activities. It can be defined as activities that add value either directly to a person or a good belonging to a person. Services possess three main characteristics that make them very different from goods. They are intangible, though often incorporated in tangible products, they are non-

\textsuperscript{17}Developing country members were not expected to do it immediately and could do it stage by stage.
\textsuperscript{18}M. Footer, \textit{op. cit.}, p.110.
\textsuperscript{20}Means ‘widespread’ or ‘very prevalent.'
storables\textsuperscript{21} and they involve a simultaneous action between the service provider and service consumer.

Services include sectors such as telecommunications, express delivery, transportation and storage and financial and business services. This sector has become leading sector of the economy.\textsuperscript{22} Liberalisation of services can bring transformative change to the broader economy, increasing productivity at the firm, industry and to the State economy. Despite the immense potential benefits from service liberalisation, services remains highly protected in most countries\textsuperscript{23}. One impediment to liberalisation has been the difficulty in assessing the effects of service liberalisation, both qualitatively and quantitatively. Liberalisation of services has become a part of the considerable revival and renewal of interest in regional integration in all parts of the world.

Liberalisation of services can be highly beneficial not for the sake of liberalisation \textit{per se}, but rather as a means to enhance service efficiency which is an important element to overall efficiency and competitiveness in the economy. Liberalisation of trade in services requires several prerequisites to ensure that it yields positive developmental, welfare and economic results. The prerequisites include several regulatory and institutional dimensions where reforms in such areas are crucial to ensure a positive impact for liberalisation of trade in services.

\textsuperscript{21}Services cannot be stored; rather the service supplier stores the capacity to provide the service at the point in time at the location which will have access to a service demander. This inability to store shall mean that services are produced and consumed simultaneously.

\textsuperscript{22}Services account for a growing share of trade and investment, and the scale of world markets in financial services is such that even marginal efficiencies resulting from increased competition and international investment could have significant multiplier effect on growth.

\textsuperscript{23}Like USA, UK, Germany and France.
Moreover, there is no consensus on what is the best approach to tackle liberalisation of trade in services i.e. whether it has to be unilateral, multilateral or regional. Undertaking liberalisation of services on these paths, i.e. unilateral, multilateral or regional, if not coordinated creates regulatory confusion which in turn results in increasing administrative costs, investment uncertainty and several other associated problems.

In whatever path liberalisation takes, WTO has encouraged States to opt for liberalisation in trade in service. International transactions in services have been defined according to four modalities. These are (1) through cross border flows in which neither the supplier nor the producer move physically but instead rely upon an intermediate service such as a telecommunications network, (2) through the movement of a consumer to a supplier’s country such as through tourism, (3) through the movement of a commercial organization to the consumer’s country, which equates with foreign direct investment and (4) through the movement of an individual service supplier to the consumer’s country.24 The dominant mode of international supply is through foreign direct investment, which is estimated to constitute well over half of the total output of trade in services.25

4.2.1. Restrictions on Trade in Services

Liberalisation does not imply the absence of all regulation. On the contrary, certain service sectors require efficient regulatory principles and measures in

order to guarantee consumer welfare and avoid market abuse. Service industries are usually highly regulated economic activities, with a large degree of government involvement in either their ownership or their provision. These regulatory measures have made service sector much closer than the goods sector and less accessible to Foreign Service suppliers.

Services are considered a harder case for liberalisation than goods not only because they are generally regulated but because of their mode of delivery, which often involves the movement of service providers or consumers across borders, unless the service is provided electronically. One implication is that it is difficult to separate their production from their consumption.

In relation to services, almost all regulations have to do with the processes of the home country rules whether concerning market access, operation, acceptable products and their distribution. Thus, host countries usually need to apply their regulations to process standards if they want to affect the quality of the service, but such application may in turn impede delivery of the service altogether.  

Deregulation in the service sector is not necessarily correlated with liberalisation. Efforts at deregulation may bring about changes in ownership patterns of domestic service providers and may reduce bureaucratic delays and red tape, but do not necessarily imply the opening of the domestic market to foreign service providers. This also implies that deregulation may not necessarily be beneficial, if it sends a result that it does not enhance the

contestability of markets. Hence, deregulation should be in the interest of the service provider and the receiver.

4.3. Liberalisation of Financial Services

Among the services financial service is the most sought service as all trade begins with finance and ends with financial transaction. Liberalisation of trade in financial services is a dramatic integration of world financial market, which is a recent phenomenon. Financial institutions carry out an increasing number of international transactions.

As a result, international financial services have grown to be an extremely large and important part of the world economy. Consumers worldwide have mostly reaped benefits of greater competition and efficiency and the central role of the financial service sector has ensured that these benefits flow to nearly every other sector of the economy. Financial service liberalisation acts as a life blood of the commercial activity. Exerting competition in this sector helps to improve the quality and efficiency of the products offered. There is a financial supplier at the one end and a consumer on the other end. The liberalisation of international trade in financial services is a significant

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31Financial supplier means, any natural or juridical person of a Member wishing to supply or supplying financial services, but the term does not include a public entity. And a ‘public entity’ means, a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
component of global and regional economic cooperation. Modern economies depend on well functioning of financial markets and financial market benefit that flow from across borders. Financial institutions may engage in transactions with non-residents either directly from their headquarters or by establishing branches and subsidiaries overseas.\textsuperscript{32}

The notion of ‘financial services’ essentially refers to the full array of functions performed by financial institutions, including but not limited to the acceptance of deposits, lending, payment services, securities underwriting and trading, assets management, financial advice, settlement and clearing services. In conducting these activities with non-residents, a financial institution engages in international trade in financial services. This is done through the newly invented information and communication technologies which has largely driven the integration of world financial services markets. The advantage of this is, it has virtually eliminated consideration of time and distance.\textsuperscript{33} The real cost of telecommunications is not related to distance today, this means that in many cases financial services can be completed as easily abroad as across the street. Financial services industry is being fundamentally reshaped, due to the globalization of world trade, technological development and increased competition.\textsuperscript{34}

\textsuperscript{33}While in the past purchasers and sellers of financial services often had to meet and exchange manually prepared paper instruments, today the same transactions can be completed immediately and over any distance.
Although technology has been the main driver behind the globalization of financial services, the liberalisation of financial services regulation through the GATS remains an important element in enhancing the efficiency of national economies. The 1997 Agreement, which finally brought financial services fully under the GATS, became an important event. This was not the end, and there was lot that needed to be done to the agreement. It was essential that the negotiators must remove further barriers to trade in financial services and to provide any rules needed to develop more liberal financial market. This was to be done while respecting the needs of the government to intervene in the financial services sector for prudential reasons.

The technological revolution accompanied by establishment of the GATS ensured that the services can be traded. But there was problem relating to balance of payment. To overcome this technological innovation in financial sectors was the solution. It also led to the development of the nation’s economy. Hence, liberalisation in financial services coupled with technological innovation can do a lot good to the world economy. Liberalisation in services especially financial services is likely to be development friendly when compared to liberalisation of merchandise goods.

Information technology has transformed service industries to the point where development of services is regarded not as a consequence but as a

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35The 1995 negotiations was called the “interim” agreement, since negotiators again decided that the results of the negotiations were not satisfactory and envisaged further negotiations in two years' time, i.e. in 1997, in which signatories improved their schedules of specific commitments and/or removed, suspended or reduced the scope of their MFN exemption in financial services.

precondition of economic growth.\textsuperscript{37} Knowledge based industries, including professional and technical services, information technology services, banking and insurance and education are the driving forces behind the transformation of the service sector. Rapid technological change is allowing services to be provided in different forms and with greater speed than ever before. The expansion of electronic networks has opened possibilities for trade in long distance services. Financial liberalisation depends on the relative strength of each financial sector policy implemented.

Majority of services can be traded electronically without a commercial presence in the recipient country and that class of services is constantly increasing due to technological developments and institutional reforms. Whereas certain services are more amenable to electronic delivery than others\textsuperscript{38}, the distinction between the two is diminishing and what was non-tradable yesterday without a commercial presence will be tradable tomorrow\textsuperscript{39} with the help of technology\textsuperscript{40}.

\textbf{4.3.1. Liberalisation of Banking Services}

Liberalisation and financial sector reforms during the last two decades have brought the issue of productivity and profitability of banks into the limelight. Profitability of banks has been under strain on account of declining net interest margin and increasing competition.


\textsuperscript{38} Services like banking, insurance, telephone are more amenable through electronic delivery.

\textsuperscript{39} Sacha Wunsch Vincent and Joanna McIntosh, ‘\textit{WTO, E-commerce and Information Technologies}’, New York, Markle Foundation, (2005), p.123.

\textsuperscript{40} Such as medical facility, professional service and others.
The comfortable business of accepting deposits and lending at administered rates has been dented following deregulation of interest rates and increase in competition after the entry of private and foreign banks. In the changing context, banks with a high degree of cost effectiveness, increased efficiency and customer centric approach should survive. Banks have responded to the liberalisation programme, upgraded their capabilities and maintained their market shares. 41 The two letters ‘I’ and ‘T’ which means information technology which has changed the way business operates.

Information technology coupled with liberalisation of service has benefited financial sector in general and banking sector in particular. It can be key differentiator between two banks and a major factor to attain competitive edge. Financial liberalization is a mixture of the following constraint such as elimination of interest rate controls, lowering of bank reserve requirements, reduction of government interference in banks’ lending decisions, privatization of nationalized banks, introduction of foreign bank competition and facilitation and encouragement of capital inflows.

It was by the end of the 1990’s electronic42 finance applications had influenced most aspects of the business of banking, with the exception perhaps of large value corporate lending. It is called as an era of ‘information

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41 The banks are now in the second phase which consists of three main components, freeing up entry to domestic wholesale banking, enhancing competition in retail banking and instituting prudential safeguards necessary for a more liberal environment.

42 The world Electronic has been defined as ‘pertaining to electron devices or to circuits or systems utilizing electron devices, including electron tubes, magnetic amplifiers, transistors and other devices that do the work of electron tubes. And the word ‘electron’ has been defined as a stable elementary particle with an indivisible charge of negative electricity, found in all atoms and acting as a carrier of electricity in solids. Defined in Megraw-Hill Dictionary of Scientific and Technical Terms, (6th Ed.), 2003.
technology’. The concept of electronic finance may be broadly defined as the provision of financial services and the creation of financial markets using information technology, telecommunication and computer networks.  

4.4. Introduction of E-Banking through Liberalisation

The first era of electronic banking in the form of telegraphic fund transfer in the late 19th century gave rise to legal problems that would appear familiar to electronic banking today. The diffusion of personal computers to large segments of the population, the creation of innovative software and the availability of dial-up modems connected to a global telephone network were technological breakthroughs which were the invented during 1980 and early 1990’s, created basic infrastructure for the emergence of digital economy. The genesis of a flat global order, a truly ‘flat world’, where the digitization of content and the ability to access this content via an inexpensive internet browser from any location in the world have connected people, business and governments, within and across borders, as never before. The e-economy is a structural shift, bringing transformation and disruptions.

Today society is in an era where the whole economy and the social structure resting on it are undergoing a change. The driving force is the information.

The advent of technology and innovation in the IT sector brought revolutionary

44 Bank of British North America v. Cooper, 137 US, 1890, p.473. (This case was related to liability for negligent performance of transatlantic wire fund transfer).
45 The term is a metaphor for viewing the world as a level playing field in terms of commerce, where all competitors have an equal opportunity.
changes in the operations of banking business. The development and dissemination of technologies helped bankers to adopt IT enabled services to have an efficient business practices and channels to sell their products.  

IT enables services refer to the use of technology as a remote delivery channels for banking services. E-banking through various delivery channels has gained wide acceptance internally and is fast catching up in India with more and more banks embracing.

E-banking is a form of digital data in computers, credit and debit cards, Automated Teller Machines (ATM), mobile banking (M-Banking), net banking and internet banking. It is defined as the automated delivery of new and traditional banking products and services directly to customers through electronic and interactive communication channels.

It includes the systems that enable financial institutions customers, individuals or business, to access accounts, transact business, or obtain information on financial products and services through a public or private network, including the internet. It is a revolution in banking industry. The E-banking involves minimal human intervention. It utilizes wires, cards, mobile phones or their equivalents and the internet.

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48 The concept and scope of IT enabled services although is in its nascent, it is successful in facilitating for an effective payment and accounting system. Delivery channels are the major components of IT enabled services.


50 *Ibid* at 16.

E-Banking is defined\(^{52}\) as the provision of banking services and the initiation and performance of payments through the banking system by electronic means and other advanced technologies. E-Banking is conceptual generic term, which denotes banking services provided through a variety of access devices and links of communication. Internet banking refers to the provision of E-Banking services via the internet, commonly through a personal computer or other access devices with internet capabilities.

An E-Banking transaction, through electronic media, is an electronic message from the customer to the bank to transfer money from one account to another account, in the same bank or to another branch of any bank anywhere in the world. It includes banks electronic message to a customer, mostly, a statement of his account.

Electronic messages dealing with money matters must be authentic and their integrity above reproach. The authenticity and integrity are ensured through specific software to encrypt and hash message and further wrap them into digital signature, if and when required. The processes ensure the validity of the electronic documents.\(^{53}\)

Globally connected computer networks enable the two way transportation of information between the bank and the customer. The basic function of the Internet Protocol\(^{54}\) is to receive and transmit any information, which may take digital form. Internet banking gives customers the ability to access virtually any


\(^{53}\)Ibid at 286.

\(^{54}\)The Internet Protocol is the method or a code by which data is sent from one computer to another on the Internet.
type of banking services except cash in any place and at any time. From an economic perspective, IT and computer networks have enhanced the automation, speed and standardization in communications and internal administration, increasing customer convenience and functionality and reducing costs in back office and front desk banking functions. And the demand of the 21st century financial institutions has also been more customers oriented which electronic banking has made possible.

Electronic trading, whether in organized markets or in alternative trading systems, can reduce costs, attract new investors and remove the physical limitations on how prices are discovered and trades are performed, thus improving the functionality, transparency and trading capacity of organized markets. Internet banking contributes to economic growth and development. It enlarges the pools of affordable credit for entrepreneurs living in remote and isolated communities by facilitating access to liquid but distant financial centres. It provides investors with direct access to overseas financial markets and dynamic local businesses with access to wider pools of capital and better performing innovative financial services.

However, quality should be ensured and essential technical and legal infrastructure required in delivery of financial services should reach to the level of expectation of customers across borders. To date, customer acceptance and

56Apostolos Ath Gkoutzinis, op. cit., p.9.
industry investment have primarily been driven by claims of efficiency, lower prices and rates of interest and most importantly convenience.\(^{57}\)

The driving force behind such transformation in financial service, especially banks, are influenced by economic environment including innovations in IT, innovations in financial products, liberalisation and consolidation of financial markets, deregulation of financial intermediation.\(^{58}\) The E-Banking is transforming the banking and financial industry in terms of the nature of core products/services\(^{59}\) and the way these are packaged, proposed, delivered and consumed. It is an invaluable and powerful tool driving development, supporting growth, promoting innovation and enhancing competitiveness.\(^{60}\)

Banks and other businesses alike are turning to IT to improve business efficiency, service quality and attract new customers.\(^{61}\) Technology innovations have been identified to contribute to the distribution channels of banks and these electronic delivery channels are collectively referred to as E-banking. The evolution of banking technology has been driven by changes in distribution channels as evidenced by Automated Teller Machine (ATM), phone-banking, smartcards, internet banking, mobile banking, and other electronic means.


\(^{58}\)These factors make it complicated to design a bank’s strategy, which process is threatened by unforeseen developments and changes in the economic environment and therefore, strategies must be flexible to adjust to these changes.

\(^{59}\)Core products and services are accepting of deposits, withdrawals, transfer of money and issue of currency.


tele-banking, personal computer (PC) banking and most recently internet banking. E-Banking is the term used for new age banking system.

E-Banking uses internet as the delivery channel by which the banking activities are conducted, for example, transferring funds, paying bills, viewing checking and savings account balances, paying mortgages and purchasing of certificates of deposits and purchasing financial instruments.

It is difficult to infer whether the internet tool has been applied for convenience of bankers or for the customers’ convenience. But ultimately it contributes in increasing the efficiency of the banking operation as well as providing more convenience to customers without even interacting with the bankers, customers transact from one corner of the country to another corner. E-Banking has experienced explosive growth and has transformed traditional practices in banking. E-Banking is leading to a paradigm shift in marketing practices resulting in high performance in the banking industry.

The components like data, hardware, software, network and people are the essential elements of the system. Banking customers get satisfied with the system when it provides them maximum convenience and comfort while transacting with the bank. Internet enabled electronic system facilitate the

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63Elisha Menson, loc. cit.
65Ibid at 103.
66Delivery of service in banking can be provided efficiently only when the background operations are efficient. An efficient background operation can be conducted only when it is integrated by an electronic system.
operation to fetch these results. The courts in India have been mentioning E-Banking includes EFT and also ATM.

In *Diebold Systems Pvt. Ltd. v. The Commissioner of Commercial Taxes*, the courts stated,

“*A* Automated Teller Machine is an electronic device, which allows a bank’s customer to make cash/withdrawals, and check their account balances at any time without the need of human teller, probably that is most widely used means of Electronic Fund Transfer*.”

The court went further to define what Automated Teller Machine is after going through the literature and the book on computers produced before the court. The court stated that,

“The ATM is not a computer by itself and it is connected to a computer that performs the tasks required by the person using the ATM. The computer is connected electronically to too many ATM’s that may be located from some distance from the computer. ATM’s today are found at banks, grocery stores shopping racks, convenience stores and sometimes on the side of the road.”

ATM also allows people to deposit cash or cheques, transfer money between their banks or even buy postage stamps. ATM’s are known by different names like Automated Teller Machine, Automated Banking Machine, Bank Box, Cash Box, Cash Dispenser, Cash Point, Hole in the Wall, Mac Machine, Mini Bank, Robotic Teller, Tele *Banco* and Ugly Teller.

EFT is a system whereby customer who wants to make payment to another person/company can approach their bank and make cash payment or give instructions or authorization to transfer funds directly from their account to

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67 Laura Bradlay, *op. cit.*, p.213.
68 (2006) 144 STC 59(Kar).
bank account of the receiver or beneficiary.\textsuperscript{70} For obtaining this facility, complete details such as the receiver’s name, bank account number, account type i.e saving or current account, bank name, city, branch name and other details should be furnished to the bank. This is to ensure that the amount reaches the beneficiaries’ account correctly and faster. If the sender does not give proper details, banker is not liable.

Electronic Clearing Service (ECS) is another aspect in EFT. It is a retails system that can be used to make bulk payments or receipts of a similar nature especially where each individual payment is of a repetitive nature and of relatively smaller amount.\textsuperscript{71} The ECS is further divided into two types, ECS (credit) to make bulk payments to individuals and ECS (debit) to receive bulk utility payments from individuals.

\textbf{4.5. Liberalisation of Banking Services in United Kingdom}

The United Kingdom (U.K) is a leading global financial services centre and the single most internationally focused financial marketplace in the world. It has an unrivalled concentration of capital and capabilities, as well as a regulatory system that is effective, fair and principled which means that more overseas financial institutions and investors choose to do business in, and with, the U. K than any other country. Currently banks in the U.K have refined their


\textsuperscript{71} This facility is meant for companies and government departments to make or receive large volumes of payments rather than for funds transfers by individuals. In India this is managed by RBI and SBI.
services with most offering very similar services being distinguished only by offering different interest rates.72

Current banking regulation in the United Kingdom (herein after called as U.K.) involves three organizations, the Financial Services Authority (FSA) the Bank of England and the treasury. The main U.K. bank regulator is the FSA. It has two main objectives, to promote efficient and fair financial services and to help consumers of financial services achieve a fair deal. To achieve this, the FSA sets standards for the activities of banks and other financial businesses, and can take action to ensure these standards are met. Some legislations were passed in view of liberalisation of banking services. Among them the chief are discussed as under.

4.5.1. The Banking Act 2009

In order to protect depositors and to maintain financial stability, the Banking Act of 200973 gave those organizations responsible for banking regulation the collective powers to deal with the crisis in the banking system. The law has been vested with powers to put a failing bank under temporary public ownership. One of the fundamental rationales underpinning banking regulation and justifying the costs it entails is the prevention of banking failures and associated depositor runs.74

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73 Came into force on 12th February, 2009.
4.5.2. **Electronic Transaction Act, 2000.**

The *Electronic Transaction Act, 2000*\(^{75}\), properly called the *Electronic Commerce (EC Directive) Regulations 2002* implement the EU's Electronic Commerce Directive 2000 into U. K law. The Directive was introduced to clarify and harmonize the rules of online business throughout Europe with the aim of boosting consumer confidence. The Directive was passed in June 2000.

The Regulations refer to an "information society service". This is defined\(^{76}\) as "any service normally provided for remuneration at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, at the individual request of a recipient of the service". The requirement for an information society service to be 'normally provided for remuneration' does not restrict its scope to services giving rise to buying and selling online. It also covers services (insofar as they represent an economic activity) that are not directly remunerated by those who receive them, such as those offering online information or commercial communications (e.g. adverts) or providing tools allowing for search, access and retrieval of data". There is a service provider who is responsible to look into matter dealing in services provided through electronic media.

4.5.3. **Electronic Communications Act, 2003**

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\(^{75}\) Act 8 of 2000.

\(^{76}\) Section 2 of the *Electronic Transaction Act, 2000.*
The Electronic Communications Act, 2003\textsuperscript{77} was enacted to make provision and to facilitate the use of electronic communications and electronic data storage and to make provision about the modification of licences granted to the financial service providers. It deals with Electronic signatures\textsuperscript{78} and related certificates.

An electronic signature\textsuperscript{79} is so much of anything in electronic form as is incorporated into or otherwise logically associated with any electronic communication or electronic data and purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both. And it is accepted as evidence in the court of law.

\textbf{4.5.4. The Electronic Signatures Regulations, 2002}

The \textit{Electronic Signatures Regulations, 2002}\textsuperscript{80} gives certain definition among them, “advanced electronic signature” means an electronic signature, which is uniquely linked to the signatory, which is capable of identifying the signatory, which is created using means that the signatory can maintain under his sole control, and which is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

\textsuperscript{77} Came into force on 25\textsuperscript{th} July, 2003.
\textsuperscript{78} An electronic signature can be as basic as a typed name or a digitized image of a handwritten signature.
\textsuperscript{79} Section 7, \textit{Ibid}.
\textsuperscript{80} Act No. 318 of 2002.
Under this law it shall be the duty of the Secretary of State to keep under review the carrying on of activities of certification service-providers\(^8\) who are established in the U.K and who issues qualified certificates. The certificates are issued to the public and the persons whom they identify, and of those persons whom they know and also the circumstances relating to the carrying the activities they are aware of.

It shall also be the duty of the Secretary of State to establish and maintain a register of certification-service-providers who are established in the U. K and who issue qualified certificates to the public. The Secretary of State shall record in the register the names and addresses of those certification-service-providers of those who are established in the U.K and who issue qualified certificates to the public. The Secretary of State shall have evidence with respect to any course of conduct of a certification-service-provider who is established in U.K and who issues qualified certificates to the public. And if it appears that the conduct of the service provider is detrimental to the interests of those persons who use or rely on those certificates with a view to making any of this evidence as considers expedient available to the public in such manner as considered appropriate.

The Act further defines the liability of certification-service-providers when a person suffers loss as a result of such reliance, and the certification-service-provider would be liable in damages in respect of any extent of the loss because

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\(^8\)The service provider includes banks and the same is seen in Indian Information Technology Act, 2000.
there is a duty of care which exists between him and the person had the certification-service-provider been negligent, then that certification-service-provider shall be so liable to the same extent notwithstanding that there is no proof that the certification-service-provider was negligent unless the certification-service-provider proves that he was not negligent. A certification-service-provider who issues a certificate to the public and to whom the provision applies shall have to maintain data of all the persons to whom certificate has been issued. In U.K. the regulators have been more cautious of the crimes that may be committed due to E-Banking. The laws are stringent and the punishment for E-Banking crimes is also harsh.

4.6. Liberalization of Banking Services in United States of America

Financial liberalization, or the opening of domestic financial markets to competition and foreign capital, is a multifaceted process involving a complex of markets and institutions intermediating funds between lenders and borrowers. In United States (herein after called as US) 40 years ago, commercial banking and securities trading were strictly separated by the Glass–Steagall Act, and banks were unable to expand across state boundaries.

4.6.1. Glass–Steagall Act, 1933

The term Glass–Steagall Act is also often used to refer as Banking Act 1933. The Glass–Steagall Act was passed in 1933 in response to the failure of

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82 Section 4 of Electronic Signature Regulations, 2002.
83 Circular No. 1248, June, 22, 1933.
the banks following the Great Depression.\textsuperscript{84} One out of every five banks failed in the aftermath of the stock market crash. The legislation was repealed in 1999. This Act was enacted to permit commercial banks and commercial bank affiliates to engage in an expanding list and volume of securities activities.

\textbf{4.6.2. Dodd Frank Wall Street Reform Act, 2013}

The \textit{Dodd-Frank Wall Street Reform Act}\textsuperscript{85} was the most comprehensive financial reform since the \textit{Glass-Steagall Act}. Like Glass-Steagall, it sought to regulate the financial markets and make another economic crisis less likely. In 2010, the U.S. finally agreed it needed bank reform. It sets up a Consumer Financial Protection Agency to be under the Federal Reserve. It gives regulators the authority to split up large banks so they don't become "too big to fail." It eliminates loopholes for hedge funds\textsuperscript{86}, derivatives and mortgage brokers. Known as the "Volcker Rule," it bans Wall Street banks from owning hedge funds.

It gives States the right to regulate banks, overriding Federal regulations if needed to protect the public. It also suggests an independent agency that has the authority to review systematic risks that would affect the entire financial industry. It reduces executive pay by allowing shareholders a non-binding vote.


\textsuperscript{86}A hedge fund is a pooled investment vehicle administered by a professional management firm, and often structured as a limited partnership, limited liability company, or similar vehicle.
Dodd-Frank proposed eight areas of regulation, Regulate Credit Cards, Loans and Mortgages, Oversee Wall Street, Stop Banks from Gambling with Depositors' Money, Regulate Risky Derivatives, Bring Hedge Funds Trades into the Light, Oversee Credit Rating Agencies, Increase Supervision of Insurance Companies and Reform the Federal Reserve. Ultimately consumer interest was utmost taken care of in the law.

4.6.3. Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, 2001

The Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, ("USA PATRIOT Act") Act\(^87\) contains strong measures to prevent, detect, and prosecute terrorism and international money laundering.\(^88\) The Act is far-reaching in scope, covering a broad range of financial activities and institutions. The provisions affecting banking organizations are generally incorporated as amendments to the Bank Secrecy Act (BSA).

The Act, whose coverage extends beyond insured depository institutions, provides the statutory groundwork for new filing and reporting obligations for banks and thrifts. It also requires certain additional due diligence and recordkeeping practices, especially in the area of private banking and foreign correspondent accounts. Some requirements take effect without the issuance of regulations. The U.S. Department of the Treasury will implement the regulation.


\(^88\)This legislation is equal to Money Laundering Act in India. But more stringent provisions are incorporated as regards financial institutions are concerned.
The object of the Act is to strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism, to subject to special scrutiny foreign jurisdictions, foreign financial institutions and classes of international transactions or types of accounts that are susceptible to criminal abuse. The object is also to require all appropriate elements of the financial services industry to report potential money laundering and to strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.


The Crime Control Act of 1990 is also known as the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 greatly expanded the authority of Federal regulators to combat financial fraud. This Act prohibited undercapitalized banks from making golden parachute and other indemnification payments to institution-affiliated parties. It also increased penalties and prison time for those convicted of bank crimes, increased the powers and authority of the Federal Deposit Insurance Corporation to take enforcement actions against institutions operating in an unsafe or unsound manner, and gave regulators new procedural powers to recover assets improperly diverted from financial institutions. The bank fraud and the false reports and entries statutes are amended by adding references to a depository institution holding company, which makes these criminal offenses applicable to

\[89\] P.L. 101-647, 104 STAT. 4789.
thefts, embezzlements and misappropriation of funds from holding companies as well as banks and to the falsification of bank holding company records in the same manner as they are to bank records.\textsuperscript{90} The Bank Fraud Act increases the maximum period of imprisonment from 20 to 30 years for each of these offenses.\textsuperscript{91}

\textbf{4.6.5. Electronic Fund Transfer Act, 1978}

The Electronic Fund Transfer Act, 1978\textsuperscript{92} (herein after called as EFT Act, 1978) was passed by the U.S. Congress in 1978, to establish the rights and liabilities of consumers as well as the responsibilities of all participants in EFT activities. The objective of the law is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this title, however, is the provision of individual consumer rights. "EFT" means, as defined under chapter 41 section 7 of the Act, any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

\textsuperscript{90} Section 2595 of the \textit{Bank Fraud Act}.
\textsuperscript{91} Section 2504, \textit{Ibid}.
\textsuperscript{92} Codified to 15 U.S.C. 1601 note.
And the term "unauthorized EFT" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

There is a board constituted under the law which prescribes rules and regulation concerning EFT. It allows for, the continuing evolution of electronic banking services and the technology utilized in such services, prepare and analyse the economic impact, considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers. It shall demonstrate for the consumer protections and send any amendment to the law to the Congress. A consumer will also be liable under the law for any unauthorized EFT.

The financial institution is liable for failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer provided the consumer's account has insufficient funds, the funds are
subject to legal process or other encumbrance restricting such transfer, such
transfer would exceed an established credit limit, an electronic terminal has
insufficient cash to complete the transaction or as otherwise provided in
regulations of the Bureau. There is civil as well as criminal liability imposed by
the Act.

Though numerous laws, U.S. has liberalized its banking sector and to
combat crimes due to introduction of electronic banking has also taken care of
in these legislations.

4.7. GATS and Liberalisation of Services in India

In Indian banking scenario, no commitment is allowed in Modes 1, 2 and 4.
Under Mode 3 licences will be granted to foreign banks which are subjected to
certain conditions imposed by the RBI from time to time. Licence for new
foreign banks may be denied if the share of the assets of foreign banks in the
total banking assets, as depicted in the balance sheet, in India exceeds 15%. Recently RBI has released an ambitious road map for increasing foreign and
private banks in India. As per the guidelines, the aggregate foreign investment
from all sources will be allowed up to a maximum of 74% of the paid up
capital of the private bank. An analysis of the commitments made in the
financial services indicates that very limited liberalisation has been realized

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DBOD. AML. No. 8677/14.06.001/2013-14, RBI/2013-14/70, DBOD.No.BP.BC.2/21.06.201/2013-14.
under GATS. For the most part, the commitments only bind the status quo and often back track the reality.

Recent reforms have also not reflected the expected liberalisation and commitment. India has a huge potential for cross-border supply of various professional services, especially through back office and outsourced activities and via electronic delivery. The existing commitment to the GATS by India has been very modest and has remained subject to a complicated and opaque licensing regime, with repeated and unhelpful interventions by the incumbent operators.

With the emergence of services as the major contributor to economic development, liberalisation of services has become a crucial issue in international negotiations on services. Liberalization of services necessitates some short and medium term adjustments on costs. To reap the benefits of liberalisation and to deal with the problems that might create in the short and medium term; liberalisation of services must be accompanied by domestic reforms. Electronic trading offers opportunities for access to markets worldwide. India too has adopted technology in banking and is on the way to liberalisation.

4.8. Reserve Bank of India and E-Banking.

There are four ways in which Central Banks intervene in the market to affect the activities of supplier of banking services. First, central banks institute

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96 Means existing the state of affairs.
measures for macroeconomic policy management such as open market operation\textsuperscript{100} for controlling domestic liquidity, interest rates and exchange rates. This is a measure adopted to control monetary policy of the country and has no concern with GATS.

Second, central banks maintain and introduce measures aimed at ensuring the soundness and stability of the banking services. Typically prudential measures include compliance with predetermined capital adequacy ratio, requirements for preserving asset quality, liquidity ratios, control on market risks, management controls, disclosure and reporting requirements and limits on grant of credit to individuals with direct and indirect interest in the bank where the loan is being sought.

Here GATS commitments do not impede on the prerogative of monetary authorities to adopt prudential measures.\textsuperscript{101} However, there is also a provision in the Annex on Financial Services.\textsuperscript{102} Hence, WTO countries should now commit to pro-competitive or market oriented regulatory principles like solvency and prudential based regulation. This compels central banks of a country to adopt pro-competitive regulatory measures.

\textsuperscript{100}Open Market Operation (OMO) is buying or selling of government securities conducted by the central bank to manage the liquidity conditions in the market and may support government market borrowing. It’s one of the major instruments of monetary policy by which the central bank infuses liquidity in the market and can be used in sterilization of capital flows.


\textsuperscript{102}The Annex states that when prudential measures run counter to the other provisions of the GATS, such must not be used as a means of avoiding commitments or obligations of a country under the Agreement. But WTO countries should now commit to pro-competitive or market oriented regulatory principles.
Third, monetary authorities\textsuperscript{103} can maintain other regulations that affect operations and competition in the financial market. For instance, a country can adopt a measure that mandates banks to allocate a certain proportion of their loanable funds to a specific industry. Monetary authorities can impose trade restrictions that could prevent the establishment of commercial presence of Foreign Service suppliers and impede the flow of foreign services through cross border supply.\textsuperscript{104}

The fourth policy is the intervention of monetary authorities that could affect the operations of suppliers of banking services pertaining to the trade regime. Monetary authorities can impose restriction that could prevent the establishment of commercial presence of Foreign Service suppliers and impede the flow of Foreign Services through cross border supply. However, GATS has made a platform to trading partners to negotiate on the issue and achieve progressively higher level of liberalisation.

Network helps linkages through economies of scale; capital efficiency and reduction of transactional costs which are driven and encouraged by the free market philosophy. This drives global financial deregulation, liberalisation of trade and capital accounts reduction of taxation and push for globalization. Trade volume increased and those economies that protected property rights, lowered transaction costs with high transparency and comparative advantage in skills, technology and governance benefited. But at the same time risks also

\textsuperscript{103} In case of banks it is the Central Bank which is the monetary authority.

\textsuperscript{104} However, Article XIX states that, to pursue the objective of the GATS to expand trade in services under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partner and the development of developing countries, members shall enter into successive rounds of negotiations to achieve progressively higher level of liberalisation.
had to be managed and finance should be regulated by the central bank.\textsuperscript{105} Reserve Bank of India (herein after called as RBI) has managed to balance between GATS provision and control of risk through various notifications to the commercial banks in India.

Based on this, the RBI issued notification to banks in India to adopt E-Banking.\textsuperscript{106} Bank offering internet banking services had to first obtain the approval of the RBI which was merely an extension of the tradition banking activities.

The levels of banking services offered through internet were categorized into three types-

(i) The Basic Level Service-In this banks websites, information on different products and services offered to customers and members of public in general are disseminated.

(ii) Simple Transactional Websites-This is the next level which allows a customer to submit their instructions, applications for different services, queries on their account balances, etc, but does not permit any fund based transactions on their accounts.

(iii) Fully Transactional Websites-This is internet banking services offered to the customers which allows the customer to operate on their accounts for transfer of funds, payment of different bills,


\textsuperscript{106} DBOD.COMP.BC.No.130/ 07.03.23/ 2000-01, dated June 14, 2001.
subscribing to other products and to transact purchase and sale of securities.107

The regulatory and supervisory concerns in internet banking arise mainly out of the distinctive features they have and mentioned above. These concerns can be classified into three categories, viz Legal and Regulatory Issues, Security and Technology Issues and Supervisory and Operational Issues. Legal issues cover those relating to the jurisdiction of law, validity of electronic contract including the question of repudiation and gaps in the legal and regulatory environment for electronic commerce. Again on the question of jurisdiction the issue is whether to apply the law of the area where access to internet has been made or where the transaction has finally taken place. This can however be decided taking into consideration the theory where the crime is committed.

What bothers is the security108 in internet banking, which is the most concerned area to the regulators. Security issues include questions of adopting internationally accepted state of the art minimum technology standards for access control, encryption, decryption, firewalls, verification of digital signature, public key infrastructure, etc.109 The RBI has its own concern about the impact of internet banking on its monetary and credit policies. This is true

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107 The said forms of internet banking services are offered by traditional banks, as an additional method of serving the customer or by new banks established whose main business is to deliver banking services primarily through internet or other electronic delivery channels as a value added service. Some of these banks are known as 'virtual banks' or internet only banks' and may not have any physical presence in a country despite offering different banking services.
108 Internet is in the public domain and there is no restriction on who can use it as long as one adheres to its technical parameters. This has also given rise to concerns over the security of data and information transfer and privacy. These concerns are common to any network including closed user group networks. But over the internet, the dimensions of risk are larger while the control measures are relatively fewer.
109 Most of these issues are referred in Information Technology Laws.
if private players produce money like internet cheque, account based cards and
digital coins. But RBI has not yet shown green signals to this kind of players,
not a big concern for today.\textsuperscript{110}

The RBI constituted a Working Group\textsuperscript{111} to examine different issues relating
to internet banking and technology, security, legal standards and operational
standards and make recommendations keeping in view the international best
practices.\textsuperscript{112} The working group made suggestions pertaining to the risks to
organization and banking system, associated with internet banking and methods
of adopting international best practices for managing such risks. It has made
recommendations on identifying gaps in supervisory and legal framework with
reference to the existing banking and financial regulations, Information
Technology (herein after called as IT) regulations, tax laws, identifying
international best practices on operational and internal control issues, and has
also made certain recommendations relating to minimum technology and
security standards in conformity with international standards, digital signature
system and clearing and settlement arrangements in case of electronic banking
and electronic money transfer.

The biggest attraction of internet as an electronic medium is its openness
and freedom, which could be achieved by RBI’s notification to bankers in India
to adopt E-Banking. But there are still certain concerns like authentication, i.e.
identity of the person dealing, authorization, i.e. the party dealing is authorized

\textsuperscript{110} Even in countries where internet banking has been developed fully, its impact on monetary policy
has not been significant.
\textsuperscript{111} RBI constituted S.R.Mittal Group on Internet to make recommendation in the field of risk to
banking for using internet.
or not, the privacy or confidentiality of data information, data integrity i.e. not altered and repudiation i.e. not repudiated. As Beck\textsuperscript{113} defines risk as a systematic way of dealing with hazards and insecurities induced and introduced by modernization itself, is correct. A major driving force behind the rapid spread of internet banking all over the world is its acceptance as an extremely cost effective delivery channel of banking services as compared to other existing channels.

Internet is a mixed blessing to the banking sector. Along with the reduction in cost of transaction, it has also brought with it a new orientation to risks and even new forms of risks to which banks conducting internet banking expose themselves to. The US National Commission on EFT attributed the link between electronic banking and IT security issues way back in 1977 as they knew that the E-Banking entails the flow of information by electronic means, the proliferation of electronic records and easier access to the protected information will become easy.\textsuperscript{114} Hence, the concern is more on security. The open network structure of the internet as a means of delivery of banking services creates new security issues for banks with respect to confidentiality, protection and integrity of information, non-reputation of properly authorized transactions, authentication of users, control and prevention of unauthorized access to the banks electronic systems and banking applications. These are addressed by the Basel Committee on Risk Management Principles released in

\textsuperscript{114}Anu Arora, ‘Electronic Banking and the Law’, (2\textsuperscript{nd} Ed.), London, Banking Technology, (1993), pp.139-140.
the final version of the Electronic Banking Groups Guidelines for risk management for electronic banking activities.115

The financial risks, the impact of the internet on the essential elements and structure of banking services and products have been a concern for the RBI. The impact on operational and non-financial risk is posing more threat then the risk of providing basic banking services.

Though RBI has framed its guidelines in accordance with the Basel, it is not able to curb the risk completely. Financial institutions are advised to review their lending policies in the light of the impersonal nature of electronic finance and consider the liquidity implications of providing their customers with direct access to deposit accounts.116 Moving from policy rationale to its components, the process of setting international financial law standards is decentralized and based on informal arrangements117 and the RBI is moving towards such policy.

An important and distinctive feature is that technology plays a significant part both as source and tool for control of risks. Because of rapid changes in IT, there is no finality either in the types of risks or their control measures. Both evolve continuously.118

The RBI has cautioned banks that though E-Banking as a new technology has many capabilities, it also has many problems and users are hesitant to use

116Regulators and supervisors all over the world are concerned that while banks should remain efficient and cost effective, they must be conscious of different types of risks this form of banking entails and have systems in place to manage the same.
118The trust of regulatory action in risk control has been to identify risks in broad terms and to ensure that banks have minimum systems in place to address the same and that such systems are reviewed on a continuous basis in keeping with changes in technology.
The use of E-Banking has brought many concerns from different stakeholders. Everybody’s primary concern is security. As more and more people are exposed to the information superhighway, privacy and security has gained its own significance due to the growth of electronic transaction.

In the words of R. Gandhi, Executive Director of RBI,

“By strengthening the privacy technology, this will ensure the secrecy of sender’s personal information and enhance the systems security. Also encryption may help make the transactions more secure, but there is also a need to guarantee that no one alters the data at either end of the transaction.”

This caution coupled with RBI’s guidelines, can to certain extent minimize the risk of E-Banking. But more importantly the problem has to be met by the law and technology.

4.9. Indian Commercial Banks and E-Banking

To cope with the pressure of growing competition, Indian commercial banks have adopted E-Banking system of delivering their products. The competition is more to the public sector banks as the newly established private banks and foreign banks have sharpened their competitive edge. RBI has recently welcomed private players to establish banking business in India and the applications for incorporation of banks have also reached which is being scrutinized. Some of the banks have been striving hard to make their structures flexible enough to accommodate technological changes.\(^{121}\)

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120 From customer, shareholders, bankers, creditors, central bank and commercial banks.
121 Adoption of technology has facilitated alternative channels for delivery with the banks and, in turn, put pressure on them to restrict or limit the branch network and employ a better skilled workforce.
The primary challenge now for the commercial banks in India is to provide consistent service to customers irrespective of the kind of channel used by them. Commercial banks in India are working towards a vision that includes transformed branches; enhanced telephone services and leading edge internet banking that provide a consistently positive multi channel experience for customers. This shall enable the banks to acquire more customers, cut costs and improve service delivery.

4.10. Risks and E-Banking

E-Banking has brought with it risks like operational risk, security risk, and money laundering risk. As internet banking transactions are conducted remotely, banks may find it difficult to apply traditional method for detecting and preventing undesirable criminal activities. By using internet, frauds are also being committed. Internet banking fraud or cyber fraud is a crime committed on banks using online technology to illegally remove money from a bank account and/or transfer money to an account in a different bank. It is a

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122 There are two types of channels. Primary channel like ATM, platform, teller, phone, and secondary channels like internet channel which include personal computers, browsers, and wireless.
124 Operational risks include inaccurate processing of transaction, non enforceability of contracts, data privacy and confidentiality and unauthorized access of transactions.
125 Security risks arises on account of unauthorized access to a bank’s critical information stores like accounting system, risk management system, portfolio management system. Breach of security may result in direct loss to bank.
126 Money Laundering means refers to a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money.
127 Fraud has been defined as a dishonest act and behavior by which one person gains or intends to gain an advantage over another person. The gain may accrue to the person himself or to someone else.
form of identity theft and is usually made possible through techniques such as phishing.

Bank frauds include all sorts of misappropriations, embezzlement and manipulations of negotiable instruments. Frauds also include misrepresentations, cheating, theft, undue favour and irregularity. E-Banking frauds involve manipulations, alterations, obliterations, hiding, eliminations and corruption of electronic documents, messages, e-mails, short message services (SMSs), digital data, signatures, command menu and software used in E-Banking. Money laundering also involves E-Frauds.

E-Banking frauds usually have characteristics like high stakes i.e. involves large sums of money, hi-tech crimes, elusive crimes means which are difficult to identify at the initial stage, cyber crimes and extra while collar crimes. There are varieties of E-Banking frauds. For a fraud victim, it affects negatively not only in terms of monetary losses, which are typically refunded by the banks, but also in terms of the efforts they have to make to restore the original situation.

129 Identity theft is a form of fraud or cheating of another person’s identity, in which someone pretends to be someone else by assuming that person’s identity, typically in order to access resources or obtain credit and other benefits in that person’s name.
130 It is a criminally fraudulent process of acquiring sensitive information such as username, passwords and credit card details by disguising as a trustworthy entity in an electronic communication.
131 B.R. Sharma, op. cit., p.3.
132 Ibid at 391.
133 Which are phishing, salami frauds, credit card frauds, ATM frauds, electronic fund transfer fraud, tele-marketing frauds, misappropriation of deposits from account of a customer, compromising the security of electronic document, hacking, etc.
Further, confidence and trust into the bank may be shaken by fraud occurrences. Customers lose trust, become dissatisfied, and may switch to a different financial service. Accumulated fraud incidents can have a profound negative impact on a bank’s reputation and hurt it in several ways. Hence, liberalisation in banking sector is a two edged sword. There is need to curb these frauds if it has to be advantages to the society.

4.11. Conclusion

The process of liberalisation is a long way to go. Over the years, the service sector of most countries of the world has been crowned as the ‘engine of growth’ because of its rapid growth in comparison to the agricultural and industrial sectors. This is due to the impact of growing volume of trade in services. Recent years have witnessed a remarkable change in the volume and composition of trade in services. The sustainability of this kind of growth depends on the efficiency of the service suppliers to deliver service to the consumers at a reasonable price worldwide because consumers always want cost-efficiency and timely delivery of the service.

The structure and content of the GATS includes to a large part dealing with trade in services especially financial services. Trading in goods is very easy and can also be easily assessed. But, a service is never an object and its

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137 For a larger group of thirty countries that have reported service exports and imports since 1977, and accounted for two thirds of “world” service exports in 2005, the ratio of service exports to goods exports grew from about 22 to 28 percent between 1977–81 and 2002–6. The ratio for imports grew from 24 to 25 percent to a peak of 28 percent in 1992 through 1996, and has since settled back to around 26 percent. This data is reported by Robert E. Lipsey, ‘Measuring International Trade in Services’, National Bureau of Economic Research, p.31.
138 Supra note 99 p.36.
delivery and consumption is difficult to assess.\textsuperscript{139} GATS states that a service within the scope of the agreement includes any services in any sector except services supplied in the exercise of government authority. The use of the phrase any service means just that no services are a priori excluded from the GATS.

The objective of those who originally drafted the ‘prudential carve-out’ of the GATS Annex on financial services was to afford broad flexibility for the regulators and regulatory rules for both developed and developing countries. Monetary authorities were allowed to maintain other regulations that could affect operations and competition in the financial market. They could impose trade restrictions to prevent the establishment of commercial presence for Foreign Service suppliers and impede the flow of foreign services through cross border supply. The reduction and elimination this type of measures are the main focus of the trade liberalisation efforts in the GATS. On the other hand WTO does nothing to help governments to determine adequacy of national regulation and the risk associated with the liberalisation.

Hence, national laws need to be strong to handle the effects of risk due to liberalisation of service which is now part and parcel of E-Banking. From a contractual perspective, they must carry out the customer's mandate with reasonable care and skill.\textsuperscript{140} The duty extends to selecting reliable intermediaries\textsuperscript{141} to carry out part of the service in appropriate circumstances. There is a duty on the customer also to exercise care and skill in transmitting

\textsuperscript{140}Westminster Bank Ltd. v. Hilton, (1926) 43, TLR 124.
\textsuperscript{141}“Intermediary” means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.
instructions to avoid misleading the bank of facilitating fraud\textsuperscript{142} and notify the bank of known unauthorized payments.\textsuperscript{143}

India has accepted liberalisation of services, but the implementation is being carried step by step. RBI has given directions to all commercial banks to adopt E-Banking. But there is restriction on entry of foreign banks. On 6\textsuperscript{th} November, 2013 central bank has unveiled a far reaching set of regulations to allow foreign banks into the country.\textsuperscript{144} This is a major step to liberalisation. Foreign banks can set up banks through subsidiaries incorporated in India and the eligibility would be limited to banks from countries that reciprocate by letting in Indian banks. Despite these two conditions, the new regulation has imposed condition that the foreign banks should invest a hefty minimum of Rs. 500 crore or $ 80 million, by way of capital in each subsidiary. RBI’s Governor, Raghuram Ranjan statement on the occasion was as follows-

\begin{quote}
"They will have access, provided they come through wholly-owned subsidiary route and abide by the guidelines. There will be a lot more freedom for foreign banks here. On net, it will be a tremendous opening to them..."
\end{quote}

This way banks in India has seen liberalizing its trade in services particularly financial services. But equally what is required is a stringent law to curb crimes that may be committed due to this liberalisation process and introduction of information technology in banking.

\textsuperscript{143} Greenwood v. Martins Bank, (1933) AC, 51 (HOL).
\textsuperscript{144} ‘Foreign Banks get a Foot in the Door’, Deccan Herald, Hubli-Dharwad (Ed.), 11\textsuperscript{th} November, 2013, p.14.