

CREDIT CARDS: A LEGAL GUIDE WITH SPECIAL REFERENCE TO CREDIT CARD FRAUDS (2001). By Rupa Mehta & Rohinton Mehta. Universal Law Publishing Co. Pvt. Ltd. Pp. 320. Price Rs. 325/-.

ELECTRONIC MEANS of communication has facilitated multifaceted e-commerce, which encompasses electronic banking also. Electronic banking has unfolded many advantages, both for customers as well as banks. Indeed, these benefits can obviate the need for branches or tellers altogether, resulting in the emergence of so called virtual banks that conduct business purely on electronic basis. It has contributed to the greatest fundamental change in the way finances are handled at present. The growth of electronic banking has been phenomenal which includes credit as well as debit cards. While there are six million credit card holders in India, the new entrant, debit card, has already touched the 1.6 million mark. Although only 70,000 establishments accept, at present, credit cards in India, the \$2 billion (Rs. 9,600 crore) industry is growing at 25 to 30 per cent annually. The Indian market is expected to reach the \$ 10 billion mark in the next three years. The debit cards grow by 100,000 a month or 150 per cent and credit cards grow by 60 per cent. Keeping in view the present growth rate, it is expected that by 2010 India will be one of the largest credit card markets.¹

The introduction of credit cards have extended benefits of e-banking to businesses also who are third major key players, besides banks and card holders, in any system of credit cards. Notwithstanding these advantages, there is a great scope for credit card misuse and the perpetration of fraud. But the subject of legal dialectics of credit cards is still at the stage of infancy in India. The book under review² is, therefore, timely and of high contemporary relevance. It has been divided into twenty-seven chapters.

Chapter one titled, “Money and Plastic Money”, elaborates merits of money, as it is a medium of exchange, measure of value, store of value, standard of deferred payment and current legal tender. Its chief characteristics have been highlighted. This chapter traces evolution of money and its transformation from paper currency to current plastic money. It also makes case for the necessity of present plastic money.³

1. *The Hindustan Times* at 1, January 29, 2002.

2. Rupa Mehta & Rohinton Mehta, *Credit Cards. A Legal Guide with Special Reference to Credit Card Frauds* (2001).

3. *Id* at 2.



Chapter two titled, "Types of Cards", deals with the evolution and utility of card system. The chief merits of credit card, travel and entertainment (T&E) card, cheque card, euro cheque card, automated teller machine (ATM) card, smart card, charge card, debit card, telephone credit card and private stored credit card, have been highlighted.

The third chapter carries a detailed discussion on multiple functions and many fold advantages of smart cards. However, the author is highly skeptical about the fraud free use of these smart cards in India because of the specific problems. In his own words, "can one envisage Smart Cards in a country with massive population, riddled with problems of poverty, illiteracy, unemployment, inflation, crime, national instability and to top it all poor infrastructure"?⁴ The use of biometric in smart cards has been explained which, in the opinion of the author, ensures high-level security, makes access fast, is non intrusive and easy to use, can secure Internet banking and electronic commerce. However, it will be too premature to forecast that biometric is going to hold field in the near future in India.

Chapters four, five and six explain basic features of a card, eligibility of the applicant and criteria for acceptance of an application for getting a card respectively. Chapter seven elaborates how the banks make credit rating by applying Kepney Tregoe Decision Analysis (KTDA). The author, with the help of interesting examples, elucidates, otherwise intricate, methods of decision making by the banks while issuing credit cards. Chapter eight is interlinked with chapter seven and should have been discussed under the title of that chapter as it explains how banks ensure debt repayment by adopting credit control techniques.

Chapter nine titled, "Card Cycle", elaborates the mechanics of actual working of cards and explains the role and functioning of key players in a credit card system like merchant establishment (ME), acquirer/acquiring bank and issuer/issuing bank. Chapter ten titled, "The Credit Card Contract", does not as such dwell on legal issues surrounding these contracts but simply reproduces rules and regulations governing credit card facilities of a hypothetical bank of India. At the end of the chapter is given a very brief account of Electronic Fund Transfer Act, 1978 of US and Unfair Contract Terms Act, 1977 of UK.

Chapter eleven deals with the marketing of credit cards and discusses various methods which are put to use by the card sellers to win over the customers. The author does not foresee prosperous growth of India's credit card industry for two reasons: (a) presence of black money (b) weak infrastructure. Since the development of infrastructure is not within the control of banks and companies selling credit cards, they are left at the mercy of the efficiency of government. The solution lies, in the

4. *Id.* at 21.



opinion of the author, in the privatization of basic infrastructure such as communication, transport and electricity.⁵

Chapters thirteen to seventeen deal with the reasons for default in payment, collection policy and techniques of over due debts, collection of debt by telephone, “best practice” manual to counter excuses and objections for payment default and collection letter formats, respectively. These chapters have one central theme, i.e. collection of overdue debts and should have been dubbed together under one chapter with a comprehensive title.

Chapter eighteen titled, “Credit Card Fraud”, elaborates various methods, which a fraudster can put to use to defraud a cardholder. Solution to these frauds lies in the hands of a cardholder who, in most of the cases, himself contributes to the commission of fraud by not taking steps that are expected of a reasonable prudent person in such cases. Chapter nineteen and twenty are also closely linked with eighteenth chapter. These chapters explain credit card fraud detection and fraud investigation techniques, respectively and gives much credence to internal management in fraud detection techniques than to the organised state sponsored police machinery. Chapter twenty discusses external and internal investigation methods, more particularly modern methods of investigation.

Chapter twenty- one deals with many facets of criminal liability vis-à-vis credit cards. The author while discussing various provisions of the Indian Penal Code, which may be applicable in a given situation, floats two doubtful propositions. First, where a person gives false information in credit card application and has no intention to repay the money on that account then he will be, in the opinion of the author, guilty of theft.⁶ Second, deception can only be practiced on a human mind (person). Therefore, if a credit card is issued to obtain cash, goods or services from a machine, then this would not be deception and, therefore, outside the preview (sic) of cheating.⁷

The first situation is a clear case of cheating and will fall under section 415 of the IPC and not under section 378, which defines theft as it is not strictly covered under this provision. The second situation overlooks a hard reality that today’s computers work not only automatically but also autonomously.⁸ Throughout the globe these computers are considered as human agents. For the fault of these computers, their masters are held responsible and any one doing any

5. *Id* at 78.

6. *Id* at 159.

7. *Id* at 160.

8. See, Tom Allen and Robin Widdison, “Can Computers Make Contracts?” *Harv. J.L and Tech.* Vol 9, No. 1 (1996).



obnoxious activity with a computer is accountable to its master. This is called the principle of attribution and reflection of this principle can be found in section 11 of the Information Technology Act, 2000 also. Thus, anyone playing fraud with a machine by using credit card to obtain cash, goods or services will be liable in the same way as if he has committed that offence with a natural person.

Chapter twenty-two titled in an unusual way as, “An Ace Up the Sleeve: Section 138 of the Negotiable Instruments Act”, develops an argument that it is quite possible to file a criminal prosecution against the credit card payment defaulter under section 138 of the Negotiable Instruments (Amendment) Act, 1988 if he issues a cheque to the bank which is dishonored due to the insufficiency of funds. Although, the author himself admits that credit cards are not negotiable instruments, yet in the authors’ opinion, this amendment has strengthened the hands of the credit issuer banks, for it has given them a device by which they could convert a civil matter into a criminal one. But will such credit card defaulter issue a cheque is a moot question. Chapter twenty- three titled, “Liability of Banks & Card Holders”, provides answers to various legal issues generated by the misuse of the credit card with the help of the decided English cases which are bound to guide Indian courts in the like situations.

Chapter twenty-four titled, “Ethics of ‘Credit Card Business’”, is self-explanatory. It debates on the ethical dimensions of credit card business. The remaining three chapters should have been appendices of the book as they cover relevant provisions of some Indian statutes (reproduced verbatim), glossary & abbreviations, addresses and websites, respectively.

The book under review has been unnecessarily divided into twenty-seven chapters. Most of the chapters are spread over less than eight pages. The comprehensive titles would have considerably reduced the number of chapters. The book only discusses traditional credit card payments and does not cover the credit card payments via the Internet, which are bound to occupy central stage in the days ahead. The legal protection available to credit card holders as consumers of service has not been given any space in the book. The book provides basic understanding of the mechanics of credit card system and outlines the legal issues, both civil and criminal, associated with the use and misuse of these credit cards. The book will be helpful to the students of business laws, bank officials, business executives, and above all to the bench as well as bar. The book has an affordable price and a nice get up for which the publisher deserves credit.

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