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DISHONOUR OF CHEQUE IN INDIA: IT'S LEGAL ISSUES AND CHALLENGES

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ABSTRACT

In India, cheque has a significant role and used it as an instrument for financial transactions, especially during the trade transactions and also used for the personal purposes. The cheque is considered as a negotiable instrument, and it means as a written document which gives a guarantee or promise to pay a certain amount to a specific person for discharging his debt. Apart from cheque, promissory note and the bill of exchange is considered as negotiable instrument. In India, the Negotiable Instruments Act 1881 is the legal framework which governs all these and also it specifies certain procedures in case of any cheating or fraud. Section 138 of Negotiable Instrument Act 1881 clarifies the penal provisions in case of dishonoring of cheque and it attracts both criminal and civil liability in India. The aim of this act is to safeguard the payee (the person whom the money is directed to be paid) and facilitate both personal and business transactions and also have the legal right to receive it from the borrower. In early days, due to the growth of trade, funds become necessary for the shipment of goods and the importance of cheques increased and they considered as an alternative method instead of carrying physical cash in hand. But gradually the lenders faced several issues regarding the delay in repayment of funds and need a statute to tackle this problem and finally it led to the enactment of Negotiable Instruments Act 1881 in India. Section 138 considered as the cornerstone of the Negotiable Instrument Act and it criminalizes the dishonor of cheque practice aiming to safeguard the payee and enhance the credibility of the negotiable instruments. But at the same time, it faces some challenges and issues.

Here, this paper delves into the major legal issues and challenges that arising while applying the law like misusing of laws, delays in complaint filing, heavy burden of cases upon the courts, the burden of proof, liability of the bank, lack of legal knowledge and also strengthening the alternative dispute resolution mechanism to reduce the pending dishonor of cheque cases and for the speedy disposal of it. This paper attempts to provide a thorough examination of section 138 by assessing the difficulties and complications related to the statute.

KEYWORDS: Negotiable Instruments Act, 1881, Dishonour of cheques, Section 138, Bank ability, Insufficient funds, Alternative resolution mechanism.

INTRODUCTION

A key piece of legislation that governs financial transactions, including Cheque, Bills of Exchange, and Promissory Notes is the Negotiable Instrument Act of 1881. These are the negotiable instruments, and it is used as an alternative for the physical cash. It gained importance due to the surge of trade

activities. These instruments are very easy to convert into cash. It reduces the hurdles of the people and ensures the smooth transferring of money from one place to another. Among these instruments, cheque is considered as the modern instrument that is widely used, and its significance is increasing day by day. At the same time, it

poses some risks. In order to tackle these hurdles and risks, the Negotiable Instruments Act 1881 specifies certain provisions for resolving these issues and mainly Section 138 defines the legal punishments also. Cheques are usually used as a medium for transferring funds for personal purposes and for business transactions. In both scenarios, if the cheque is dishonored by the bank due to insufficient funds, the act protects the lender from these frauds by way of giving certain rights to them. There are mainly three parties to a cheque, "the drawer" means the person who issued the cheque, "drawee" means the bank and the "payee" means the person whom the money is directed to be paid.

Here, the payee can convert the cheque into cash by submitting it to the bank and it's the duty of the bank to honor the cheque. But due to any technical issues or insufficient funds or any other reason, the bank may dishonour the cheque and fails to give amount to the payee. So, for the purpose of protecting the interest of the payee, the Parliament amended the Negotiable Instruments Act 1881 and provide the remedy for them by inserting sections 138 to 142. It deals with the penalties in case of dishonour of cheques for insufficient funds in accounts. The dishonor of cheque is a common problem in business and personal transactions, often leading to disputes between parties. Section 138 makes the dishonour of cheque as a criminal offense. Under this provision, the drawer can be prosecuted, if the check is dishonored for the reasons which mentioned under the law. The aim for creating this section is to enhance the credibility and the trustworthiness of the negotiable instruments.

Section 138 includes both imprisonment and fine. Imprisonment is up to two years and the fine which may extend to twice the amount of the cheque and the punishment is increased in 2002 from one year to two-year. It lays down the procedure to be followed by

the payee in case of any dishonoring of cheque. Bank also plays a pivotal role in the cheque bounce cases like the memo which is issued by the banks considered as valid evidence for the offence. The primary purpose of section 138 is to encourage accountability in financial transactions by discouraging people and organizations from issuing cheques without enough money.

Although the law faced some challenges, the increasing number of cheque bounce cases day by day led to the overburdening of cases on the courts which takes a long time to resolve the issue; actually, it affects the smooth functioning of the courts. It is crucial to have an alternate approach in order to mitigate this problem. This study aims to investigate the nuances of Section 138 of the Negotiable Instruments Act of 1881, looking at its legal structure, effects on the financial system, and difficulties.

MEANING OF NEGOTIABLE INSTRUMENT

The negotiable instrument refers to a written document that promises to pay a certain amount of money given to a specified person named in the instrument. The main ingredient is that there should be no conditional order in the instrument. In the early days, the use of promissory notes was very high due to the growth of trade, now the importance is to cheques. These instruments are negotiable and transfer from one person to another without any hurdles and convert them into cash. It's an important tool for trade and commerce. Negotiable Instruments acts as a means of payment of credit in commercial transactions and for paying the debts or obligation.

The holder of the instrument holds some legal rights and it's very flexible and widely used in business and personal transactions. In India, negotiable instruments are governed by the Negotiable Instruments Act 1881, it's the legal framework for protecting the rights and interests of payee. Under the act, Section 13

defines Negotiable Instrument. Negotiable Instrument means Promissory Note, Bill of Exchange, Cheque payable either to order or to bearer.¹ Section 4 defines Promissory Note and Section 5 defines the Bill of Exchange, Section 6 defines cheques, and it includes electronic form also and it was incorporated in 2002 and came into effect on 6/2/2003. Electronic form of cheque means the cheque drawn in electronic form by using any computer source and signed in a secure system with digital signature. It mainly consists of three parties; they are drawer, payee, drawee. Section 7 defines all three things, Drawer means the maker of a bill of exchange or cheque and the Drawee means the person thereby directed to pay and the Payee means the person mentioned in the instrument directed to be paid.

If the cheque is not honored due to any insufficient funds or any other reasons. then the payee of the cheque has the right to file a case against the drawer for dishonoring the cheque under Section 138 of the Negotiable Instruments Act. It defines the procedure and penalty, and it imposes 2-year imprisonment or with fine which may extend to twice the amount of the cheque. Chapter 17 introduced in 1988 and containing sections 138 to 142 with the aim of protecting the rights of the payee and to enhance the credibility of the negotiable instrument. Also, the cheque should be presented before the bank for payment within three months from the date of issue and after that it will be considered as a stale cheque. Under Chapter 13, Section 118 of Negotiable Instruments Act says about the presumptions as to negotiable instruments. It says about the time of acceptance and every bill of exchange was accepted within a reasonable time before its maturity. The negotiable instrument has several key features like,

- It can be transfer easily from one person to another.

- It should be signed by the maker, ensuring that it is legally binding.
- In the instrument, it should specifically mention the sum of money.
- It must be an unconditional order.
- It should mention the name of the specific person in the instrument.

Cheques are widely used because of the high convenience, and it allows secure transfer of funds without any need of carrying cash. It acts as a proof of payment, helping both drawer and the payee to maintain payment history. In case of any default or any dispute arise, Negotiable Instrument Act 1881 provides a legal framework for the payee to seek remedies through Section 138 of the act.

TYPES OF CHEQUES

OPEN CHEQUE: This kind of cheque can be cashed at the bank counter and is payable to the payee upon demand.

CROSSED CHEQUE: In this type of cheque, the drawer draws 2 parallel lines on the top left side of that cheque, it specifies that the cheque must be cashed only at the mentioned bank. **BEARER CHEQUE:** This cheque is payable to the person who presents it. No need of endorsement for this type of cheque.

POST-DATED CHEQUE: If the date in the cheque is for a future date, then it is called a postdated cheque, it can't be cashed until the date on the cheque arrives.

STALE CHEQUE: If the cheque is presented for payment after three months of its issue, then it is considered as a stale cheque, then it lacks the enforceability.

LEGAL CHALLENGES AND ISSUES UNDER CHEQUE BOUNCE CASES

DELAY IN FILING COMPLAINTS

One major issue regarding the dishonour of cheque is the delay in the initiation of

complaints. Section 142 of the Negotiable Instruments Act deal with the cognizance of offences here under section 142 (1) (b) says that such complaint is made within one month of the date on which the course of action arises under clause c of the proviso to Section 138. Section 138 (c) says that “the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within 15 days of the receipt of the said notice.”

So, there is a time limit is given for filing the complaint and if the complainant fails to do so, the court will reject the case. However, it provides that, if the complainant satisfies the sufficient cause for not filing the complaint within the prescribed period to the court, then the court will consider the case. Along with the delay in filing, the cases are delayed due to procedural issues, then it led to pendency of cases and delay in justice, and it slows down the pace of trial and create cumbersome for the parties involved like incorrect service of notice.

For initiating the case, the payee must send a legal demand notice to the concerned drawer’s address, then only the payee can institute complaint and sometimes, due to the incorrect address or not knowing the proper address of drawer led to delay in filing complaint within the time limit and also due to lack of legal awareness, gradually it will lead to reject the complaint. To solve this issue, conduct seminar and legal awareness camps in panchayats and public places with the help of legal services authorities.

Recently, on 18th March 2025 the Supreme Court explained that time for filing the complaint in a case named **Vishnoo Mittal V M. S. Sakti Trading Company²**, the court considered the word “cause of action” which mentioned under Section 142 (1) (b). Here, in this case the court explained that the “cause of action” for Section 138 of Negotiable Instruments Act arises not on the dishonour

of cheque but when the amount remains unpaid after the expiry of 15 days after the demand notice. So, from these it's very clear that some provisions need clarity and due to some ambiguity in the legislature it led to judicial interpretation.

AMBIGUITIES IN THE LEGAL FRAMEWORK

Another primary legal issue is that the term dishonour is not clearly interpreted in the Negotiable Instrument Act. It is only mentioned about two situations when the cheque gets dishonored. It is defined in a very narrow sense. Typically, a cheque gets dishonored due to insufficient funds in the account or if it's a closed account. The law doesn't specify the actual meaning, and it will lead to ambiguities, whether it is dishonored only in case of insufficient funds or in any other situations like signature mismatch, wrong date, if amount not mentioned correctly or by technical errors by the bank. Section 138 of Negotiable Instruments Act says only about the initiation of criminal proceedings against the drawer in case of dishonoring of cheque for insufficient funds in the accounts. The term should be elaborate and give wider interpretation, and it is failed to address other circumstances where a cheque might be returned.

The next thing it is connected to the act is the time frame of sending a notice. Section 138 mandates that the notice should be sent within 30 days of the dishonor however, the actual way of delivery method or mode of delivery of the notice is not mentioned in the act, the law doesn't specify that in which circumstances the payee can initiate proceedings because it is mandatory that the payee should send notice and the confusion is whether sending the notice through post is sufficient or if personal delivery is needed and it led to confusions to the parties concerned.

Due to these reasons, parties get confused, and the court interpreted the terms and

delivered the judgements. With the help of judgements pronounced by the court, it helped the aggrieved party to approach the court for redressal. The court delivered several judgments regarding the mode of delivery of notice and about the wrong signature in the cheque.

In **Vinod Tanna V Zaheer Siddique**³, the court considered whether an incomplete signature on the cheque would constitute this dishonour, hence, said that it doesn't constitute an offence under Section 138 of the Negotiable Instruments Act. But, after notifying the drawer about the incomplete signature and the drawer is not made any arrangement thereafter, in such circumstances Section 138 of the Negotiable Instruments Act will attract and it was held in **Laxmi Dyecham V State of Gujarat**⁴.

We have a plethora of cases regarding the issue of demand notice which is delivered by the courts. Under section 138 (b) of Negotiable Instruments Act mandates giving of notice by the payee to the drawer within 30 days of the receipt of information from the bank regarding the dishonour of cheque. Before that, the first step is the complainant must follow the ingredients of the act. Mere giving of notice has no effect. The said notice should be received by the drawer, then it gives 15 days period to make the payment and after the said period, only the cause of action arises, this portion is reported in **Dalmia Cement (Bharat) Limited V Galaxy traders and Agencies & Others**.⁵

The purpose of demand notice is to protect the honest drawers, and it gives extra 15 days for them to make the payment, so he can rectify the mistake and can avoid from criminal proceedings. It is stated in **Central Bank of India V Saxons Farm**⁶ also in **Chikkachowdappa V Seetharam**⁷ case.

The next part is related to the mode of service of notice under Negotiable

Instruments Act, it doesn't say anything about the mode of its service. But if the notice is sent through any other modes other than the registered post is considered as a valid under Section 138 which is decided in **SIL Import USA V Exim Aides Silk Exporters**⁸.

In **Fakkirappa V Shiddalingappa**⁹ and in **Chikachowdappa V Seetharam**, held that the only requirement for the service of notice is, it should have been sent to the correct address of the drawer. Since the mode of service is not prescribed, it can send through registered post or through any other means. The words like "left", "not known", "not available in the house", "house locked" all have the same meanings. Therefore, if the address of the drawer is proved, even if the notice is returned with the above remarks, then the notice shall be considered as a valid and have been served on the drawer. When the payee sent the notice to the drawer's

current address and the notice is returned as unclaimed, means (the drawer didn't accept or

receive the notice from the post office), then also the notice is deemed to have been served, held in **K. Bhaskaran V Sankaran Vaidhyan Balan**¹⁰.

In **Ajeet Seeds Lt V K. Gopala Krishnaiah**¹¹ held that, it is not required to state in the complaint that the notice is send. It was deemed to be served even though it was returned as unserved. Service of notice is deemed to have taken place at the moment, the letter would have been delivered in the ordinary course of business. The Evidence Act, 1872 under Section 114 allows the court to assume that the notice would have been successfully delivered to the drawer's address. When a notice is issued to the correct address through registered mail under Section 27 of General Clauses Act, 1897 creates a presumption that the service of notice has been completed.

THE BURDEN OF PROOF

In dishonor of cheque, the burden of proof is mainly upon the payee, the complainant must prove the dishonor of the cheque and the non-payment of amount. If there is no evidence, then the case can be dismissed by the court. So, for that purpose, the collection of evidence is essential, mainly the bank memo, notice and the dishonored cheque. Here, the documentation should be proper and it's the duty of the complainant to convince the court that the drawer of the cheque constituted the cheque dishonour offense. The courts can dismiss the case, if there is lack of evidence or any technical issues regarding the bank memo, mismatch of sign, authenticity of the notice etc. If the complainant submits all its evidence, then the burden of proof's automatically shifted to drawer and it's the responsibility and duty of the drawer to prove the contentions and evidence given by the complainant is wrong. Due to this, it led to pending of cases, and it takes so many years to solve it.

there are some presumptions under law against the drawer and it's the biggest challenge for the drawer to deny it with the evidence and it takes time, which led to backlog of cases. The driver relay on the grounds of improper service of notice, signature is forged, and that the cheque was issued not for discharging any legally enforceable debt. Lack of proper evidence and documents led to pendency of cases. Sometimes, there may be disputes over the credibility of the bank memo also. Finally, the burden of proof is upon the payee.

JURISDICTIONAL CHALLENGES

The jurisdiction for case filing under section 138 of negotiable instruments act is another issue and challenge for the parties. It placed several misunderstandings among the parties. Sometimes, it led to the rejection of the complaint. Complainant gets confused whether it filed before the court where the dishonoured cheque

presented or should it file before the court where the address of the accused present. It created confusions and ambiguities regarding the jurisdiction. Filing complaint at the concerned court is another challenge for the parties, later it may lead to several disputes and contention over that territorial jurisdiction like whether the case is maintainable, or court has the right to entertain such complaint. Higher courts delivered several pronouncements regarding the territorial jurisdiction.

In, **Harman Electronics (P) Ltd V National Panasonic India Ltd¹²**, held that the complaint cannot be filed in the court where the notice is issued. If the place of dishonor and issue of notice is same, then it is considered as valid jurisdiction to try the case.

But in **Dasharath Rupsingh Rathod V State of Maharashtra¹³**, which held that place of dishonor is the territorial jurisdiction i.e.; where the payee bank is situated. This decision is also followed by the apex court in **K.K Polycolor India Ltd V Global Trade Fin Ltd.¹⁴**

BANK'S LIABILITY

The bank has a significant role in the cheque bounce. Because the primary duty of the bank is to clear the cheque without any failure from the side of bank. If the cheque is bounced, the bank should state the reasons and should issue a bank memo to the payee by citing the reasons, why the cheque has been bounced. The bank's memo providing by the bank is a significant piece of evidence in the cheque bounce case. So, it's the duty of the bank to give valid reasons and free from many ambiguities. If the check is dishonored due to any technical error from the bank, then it may be held liable for the damages caused due to the payee. Under section 146 of the Negotiable Instruments Act 1881, says that the bank's memo or slip is prima facie evidence, and the court will

presume the fact of dishonour of cheque. If the said evidence submitted by the complainant, then the court can summon the bank as a witness if it things fit or if they need any clarity in the documents submitted. The bank should thoroughly check the particulars of the cheque before dishonoring and the banks should work with the norms of Reserve Bank of India. If they fail to do so, they will be liable for deficiency in service under Consumer Protection Act.

PENDENCY OF CASES

Another challenge which can see in the cheque bounce case is the pending cases and it is due to the procedural delays, less awareness among the public, mainly regarding the limitation period, submission of evidence and burden of proof, lack of proper infrastructure etc. One of the main reason for taking long time to resolve is the huge backlog of cases of various types in the courts. In many jurisdictions, there are so many cases are pending, mainly through the adjournments and delays in hearing. Due to this long period procedure, it can delay the purpose of the act and creates more hardships to the complainant or to the payee especially in commercial transaction disputes. If the respondent is a company or entity, then also it would lead to slow down the pace of proceedings because of the adjournment reasons or the non-appearance of the respondents and it severely affect the payee.

In Negotiable Instruments Act, Section 147 says that the offence is compoundable in nature and can settle outside the court. However, there is no big progress in reducing the backlog of cheque bounce cases. With the purpose of saving long time court procedure, the Parliament inserted section 143 in the act and cheque bounce cases tried on summary trial, but also it takes time to resolve.

With the view of increasing cheque bounce cases day by day, the Supreme Court issued

certain directions to all High Courts on speedy disposal of cases in 2021. While hearing a petition, as of 31st December 2019, 35.16 lakh cases were pending. In the order, it says that the service of summons on the accused under Section 138 is one of the reasons for the delay and direct that to try multiple offences of the same person as jointly to consume time and also court recommended that allowing more than 3 offences of the same kind to be tried jointly, if they were committed during the period of last 12 months.¹⁵

As per the latest documents, on December 20, 2024, an MP asked the data regarding the pending cheque bounce cases in the Lok Sabha and the law minister answered that over 43 lakhs cheque bounce cases are pending in various courts across the country. The highest is in Rajasthan and said that the factors that contribute to delay the process include multiple adjournments, inadequate planning, absence of a deadline specified by the courts for the resolution of cases etc. Indian Bank Association had filed a writ petition for seeking guidelines for the strict adherence to the procedure mentioned under Section 143 of Negotiable Instruments Act and in 2021 the Supreme Court constituted 10-member committee for submitting a report containing the steps for the disposal of cases. It mentioned about the establishment of Special Negotiable Instruments Courts.¹⁶

SUGGESTIONS

- Strict adherence to the procedures and rules– The courts must ensure the strict adherence to the ingredients of the Negotiable Instrument Act and must educate the public by conducting legal awareness and the paves way to reduce the dismissal of complaints by the court. In Negotiable Instruments Act, it says several time periods for each stages like issuance of notice within 30 days

and in these cases the only thing which can do is to give proper communication to the public. Because today the cheque related cases are increasing day by day, without any proper rules, it will affect the financial transactions.

- Enhance the imprisonment period- Under Negotiable Instruments Act, the punishment is only for two years, and the fine is the twice the amount of that cheque and in most cases, court only imposed the fine and not give any imprisonment for the respondent. So, it makes the drawer less seriousness about the offence; in order to create the seriousness, court should ensure strict punishment for the habitual offenders and must increase the period of imprisonment. But at the same time some complaints are filed by the complainant against the drawer only with the view for gaining monetary benefits and the court should protect the honest drawer from them.
- Use alternative method for speedy disposal of cases- The Advocates and the courts must encourage the parties to settle the cases outside the court and to rely on alternative dispute resolution mechanism like mediation and through this it will eventually reduce the burden of the courts and can resolve the issues speedy and in an amicable manner. So, it is very important to strengthen the ADR mechanism for the speedy disposal of cases.
- Establishment of Special Negotiable Instrument Courts- It is very necessary to establish Special Courts all over the country in order to reduce the backlog of cases

and it boosts the functioning of the lower courts and High Courts in the country. It is already suggested by the committee before the Supreme Court regarding the establishment of a special courts and it explained the necessity of such courts in India, also adopt the measures like Case Management System for the disposal of cheque related cases.

- Conduct Public Awareness in the Society- The other thing is to conduct public awareness program with the help of legal services authorities and introduce and explain their rights and duties to make aware about the Negotiable Instrument Act and take classes to create an idea about the filing procedure of cheque bounce cases and issues small handbooks for references etc. would help the public

CONCLUSION

In conclusion, Negotiable Instrument Act is very necessary to regulate the business transactions as well as for the personal transactions. Section 138 gives the payee the right to sue the dishonest drawer. But the main issue is the lack of awareness regarding the procedure for initiating complaint and it is very essential to know the time frame mentioned in the act and by conducting awareness program, the ambiguities will be removed and also it need some reforms in the imprisonment method and should increase the incarceration period. Rely on alternative dispute resolution mechanisms for solving the pending cheque bounce cases and encourage the out of court settlement. The law should increase the protection of interest of payee and also protect the honest drawer. Due to the long period of procedure, the justice may be delayed to the concerned party and make sure to provide remedy by way of resolving

dispute as soon as possible.

In today's world, it is very necessary to strengthen the Negotiable Instruments Act and to maintain the credibility upon the negotiable instruments. These issues and challenges will hinder the purpose of the act so it's very necessary to establish special courts for the adjudication of cheque bounce cases and should ensure fair and transparency of the act.

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