

# Comparative Analysis of Cheque Dishonour in India

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## Introduction

The profile of the study provides an elaborate analyses of judicial verdicts delivered by the High Courts and Supreme Court of India in cheque dishonour cases. The operation of certain provisions of the law of Criminal Procedure Code are excluded for the courts to take cognizance of offence under section 142 of the Negotiable Instrument Act, 1881.

The non obstante clause in section 142 operates in three main area i.e.

- a) no court shall take cognizance except upon a complaint made in writing by the payee or the holder in due course of the cheque;
- b) such complaint shall be made within one month from the date cause of action arises, and
- c) no court inferior to that of Metropolitan Magistrate or Judicial Magistrate of First Class shall try the offence.

## Negotiable Instruments (Amendment) Act, 2018<sup>1</sup>

The Objects and Reasons to the amendment read: “The Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delaying tactics of unscrupulous drawers of dishonoured cheques, due to easy filing of appeals and obtaining stay of proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque.

Such delays compromise the sanctity of cheque transactions. It is proposed to amend the Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money.

The proposed amendments will strengthen the credibility of cheque and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.” Sections 143A (1) to (6) and Section 148 (1) to (3) are newly inserted in the Act.

## Power to direct interim compensation<sup>2</sup>

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant-
  - a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
  - b) in any other case, upon framing of charges.
- 2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

<sup>1</sup> Act No.20 of 2018 – effective from 01.09.2018.

<sup>2</sup> Sec.143A of Negotiable Instrument Act

- 3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the court on sufficient cause being shown by the drawer of the cheque.

### **Power of Appellate Court to order payment pending appeal against conviction-**

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court:

Provided that the amount payable under this sub-section (1) shall be in addition to any interim compensation paid by the appellant under section 143A.

- 2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the court on sufficient cause being shown by the appellant.
- 3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal.

If the drawer of the cheque is acquitted, the court shall direct the complainant to re-pay to the drawer the amount of interim compensation with interest.”

### **Courts of Appeal:**

High courts are constituted as constitutional courts under Part VI, Chapter V, of the Constitution. Article 214 of the Constitution mandates that every State shall have a High Court. Any aggrieved person can appeal to the High Courts against orders passed by subordinate courts only on substantial questions of law. High courts have administrative jurisdiction over subordinate Courts in the State under Articles 226 and 227 of the Constitution. They are empowered to entertain writs against infringement of constitutional rights and for quashing criminal complaints under Section 482 of Cr. Code of Procedure.

There are 29 High courts in the country. The Calcutta High Court was the first court established on 02.07.1862 under the Indian High Courts Act 1861, followed by the Bombay High Court established on 14.08.1862, Madras High Court established on 15.08.1862 and Allahabad High Court established on 11.06.1886. Some of the major High Courts have additional benches; for example Madras High Court has a permanent bench at Madurai. Bombay High court has additional benches at Aurangabad, Nagpur and Panaji. Allahabad High court has an additional bench at Lucknow. From 01.01.2019 the High Court of Andhra Pradesh was bifurcated; the High Court at Hyderabad and the High Court at Vijayawada are for the States of Telengana and Andhra Pradesh respectively.

The Supreme Court of India was established on 26.01.1950. It is the highest judicial authority and final court of appeal under the Constitution of India. In the year of inception, the Supreme Court of India had only seven judges in the court and any matter would be heard by them together. Since as workload increased, the judges of the Supreme Court started to sit in a panel of two or more judges in different benches.

Now the Supreme Court, consists of Chief Justice and 30 sanctioned other judges appointed by the President of India. Special Leave Petition (S.L.P.) must be filed with the Supreme Court seeking admission of any appeal against orders passed by High Courts Appeals against verdicts of High Courts of various States are decided by the Supreme Court which are final and binding on all Courts and Tribunals in the country and the Central and State Governments. Any aggrieved person can approach the Supreme court directly under Article 32 of the Constitution against any infringement of fundamental rights enshrined in Chapter III of the Constitution.

The Supreme court may also take cognizance of matters *suo moto* under Article 142 of the Constitution without anyone drawing its attention. Law is enacted by the Parliament or State Legislature. Courts do not

make the law, court's responsibility is to verify the legitimacy of the law on the touchstone of Constitutional mandate.

## **Cheque dishonour in the context of other countries-**

A study on how cheque dishonour cases are treated in other countries is made to give the reader better knowledge of the issue.

### **1) England and Wales-**

Civil remedy is available to the holder and he can bring a civil suit to get damages. The holder is entitled-

- a) to recover the cheque amount,
- b) interest thereon from the time of presentation for payment, and
- c) Expenses of noting. If a cheque is drawn on an account with insufficient funds, banks charge heavily.

### **2) Scotland-**

If a cheque is dishonoured, what funds are present in the bank account are "attached" and frozen until sufficient funds are credited to the account of the payee of the cheque, and the drawer obtains a letter from the payee stating that they have no further interest in the cheque.

### **3) Japan-**

If an account holder bounces two cheques in six months, the bank will suspend the account for two years. If the account belongs to a public company, its stock will also be suspended from trading on the Stock Exchange which can lead to bankruptcy.

### **4) Pakistan-**

Whoever dishonestly issues a cheque towards repayment of a loan or fulfilment of an obligation will face with imprisonment which may extend to three years and with fine. Pakistan Penal Code Section 489 F. (Indian law followed).

### **5) Australia-**

- a. Civil remedy in cheque bouncing cases. The holder may recover damages from any person liable on the cheque, and an endorser - if the cheque is dishonoured in Australia, the sum ordered to be paid by the cheque, and
- b. the amount of interest in accordance with the regulations, is payable in respect of the sum.

### **6) Singapore-**

Only civil remedy. The holder can recover,

- a) the cheque amount,
- b) interest thereon from the time of presentation of the cheque, and
- c) the expenses of noting.

### **7) Malaysia-**

Imposes civil remedy. Cheque dishonoured is termed as „bad cheque.“ If three bad cheque incidents are committed over a 12 months period, the drawer will be deemed as a bad cheque offender. The current account of the offender will be reported to the Credit Bureau by the drawee bank. His name will be included in the list of „bad cheque offender“ and will be circulated to all banks in the country. The current account of the offender with other banks will be closed within one month.

### **8) France-**

Civil remedy is available. The holder can claim,

- a) the amount of the unpaid cheque,
- b) interest from the date of presentation, and
- c) the cost. Under French law the names of frequent offenders will be registered to a master database and banning them from issuing cheques for five years.

- 9) **U.S.A.** There are different laws in different States. States impose civil as well as criminal liability. Increased punishment prescribed for frequent offenders.
- 10) **U.A.E.** Banks have agreed to halt criminal prosecution for bounced cheques drawn by small and medium sized business customers under a rescue initiative launched by banking industry. U.A.Es<sup>3</sup> financial system which relies on paper cheques as security in business transactions adopted this plan to arrest increasing levels of default.

### **Conclusion:**

Despite the insertion of Chapter XVII in the Negotiable Instrument Act, 1881 the growth in cheque dishonour cases remained unstoppable. With a view to redress the grievance of stake holders, whose money was locked up due to long delay in settling the cases, a Working Group was formed for recommendation for better implementation of the provisions of the Negotiable Instrument Act, 1881.

That the new sections are aimed, “to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheque due to insufficiency of funds in the accounts or for the reason that exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment to honest drawers.”

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The study confirms that in most other countries cheque dishonour continues to be a civil wrong.



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<sup>3</sup> Web Search the National Business updated dated 28.03.2016.