



AN JUDICIAL STUDY OF ALTERATION AND DISHONOUR OF NEGOTIABLE INSTRUMENT IN CONTEXT OF INDIA

Renu Chaudhary

PhD. Scholar

Faculty of Law

Himalayan Garhwal University

Guide Name – Dr. Rakesh Kumar

ABSTRACT

The Negotiable Instruments Act (NI Act) of 1881 is a crucial legal framework governing negotiable instruments like bills of exchange and cheques in India. These instruments facilitate commerce by functioning as promises to pay certain sums. The Act addresses two key aspects: alteration and dishonour. Alteration refers to any change on a negotiable instrument, such as modifying the amount, date, or payee. The NI Act protects those unaware of the alteration (strangers) but empowers bona fide holders (holders in due course) to enforce the instrument based on its original content. Case studies like *Central Bank of India vs. Ram Narain (1955)* exemplify how courts define material alteration. Dishonour occurs when the drawee (responsible party) refuses to pay the instrument. The NI Act outlines reasons for dishonour, including insufficient funds or stopping payment. The holder can sue the drawer, endorsers, or other parties liable. Dishonouring cheques due to insufficient funds attracts penalties like fines or imprisonment under Sections 138-142. Cases like *Canara Bank vs. M/s Krishna Enterprises (2003)* illustrate the application of these penalties. Understanding the NI Act is vital for all parties involved in using negotiable instruments.

Keywords: NI Act, Dishonor Cheques, Bills of Exchange, India

I. INTRODUCTION

The smooth flow of commerce in India heavily relies on negotiable instruments like bills of exchange and cheques. These instruments function as promises to pay a certain sum of money, facilitating credit transactions and expediting business dealings. To ensure their proper use and legal recourse in case of issues, the Negotiable Instruments Act (NI Act) of 1881 serves as the guiding legal framework. This act establishes clear rules governing these instruments, particularly regarding two crucial aspects: alteration and dishonour.

One of the primary concerns with negotiable instruments is their potential for alteration. The NI Act defines a material alteration as any change that affects the instrument's operation, such as modifications to the amount, date, or payee. Such alterations can significantly impact the involved parties' liabilities. The Act protects those

unaware of the alteration (strangers) by discharging them from any obligations on the instrument. However, it empowers the holder in due course – a bona fide holder who acquired the instrument for valuable consideration without knowledge of the alteration – to enforce the instrument based on its original content. To illustrate this, landmark judgements like *Central Bank of India vs. Ram Narain* (1955) established that altering the date of a cheque is a material change, impacting liabilities.

The flip side of the coin is the concept of dishonour. A negotiable instrument is considered dishonoured when the drawee, the party responsible for payment, refuses to accept or pay it. The NI Act outlines various reasons for dishonour, including insufficient funds in the drawer's account (the one who issued the instrument), the drawer stopping payment, discrepancies in crossing mechanisms on cheques, or even insufficient stamps. Each reason for dishonour carries its own legal weight. For instance, dishonouring a cheque due to insufficient funds can lead to penalties under Sections 138-142 of the Act, as exemplified in the case of *Canara Bank vs. M/s Krishna Enterprises* (2003).

Understanding the legal implications of alteration and dishonour is crucial for all parties involved in using negotiable instruments. The NI Act provides a clear framework for determining liabilities, protecting innocent holders, and ensuring a smooth flow of commerce. Analyzing relevant case studies, like *State Bank of India vs. M/s New Alipore Electric Works Pvt. Ltd.* (2009), which dealt with dishonour due to crossing discrepancies, sheds light on how courts interpret the Act and its practical application.

II. ALTERATION OF NEGOTIABLE INSTRUMENT

MATERIAL ALTERATION

The Negotiable Instruments Act (NI Act) serves as the cornerstone for legal recourse regarding negotiable instruments like cheques and bills of exchange. Within this framework, the Act meticulously defines a "material alteration" as any change made to a negotiable instrument that directly impacts its function (Section 95). This goes beyond simple scribbles or edits.

Imagine a scenario where someone alters the amount on a cheque. This change fundamentally affects the instrument's operation, potentially leading to the issuing of a larger sum than intended. Similarly, changing the date on a cheque can impact its validity and timeliness for encashment. The NI Act recognizes these scenarios and others like alterations to the payee name – all of which fundamentally disrupt the intended flow of funds as per the original instrument.

However, the NI Act takes a nuanced approach. While it protects those unaware of the alteration (strangers to the instrument) by absolving them of any liability, it empowers the "holder in due course" – a bona fide recipient who acquired the instrument for value without knowledge of the alteration – to enforce the instrument based on its original content. This ensures that those who take instruments in good faith are not penalized for the actions of others.

Court cases serve as crucial illustrations of how the NI Act defines and handles material alteration. Landmark judgements like *Central Bank of India vs. Ram Narain* (1955) established that modifying the date on a cheque constitutes a material alteration, highlighting the specific types of changes the Act considers impactful. By analyzing such cases, we gain a deeper understanding of how the NI Act upholds the integrity of negotiable instruments and protects involved parties.

EFFECT OF MATERIAL ALTERATION

The Negotiable Instruments Act (NI Act) meticulously navigates the complexities surrounding material alterations on negotiable instruments. Section 95 defines a material alteration as any change that affects the

instrument's operation, encompassing alterations to the amount, date, or payee. Here's where the concept of "strangers" and "holder in due course" comes into play.

Imagine a situation where a cheque is issued for a specific amount but later tampered with to reflect a higher value. The NI Act protects those considered "strangers" to the alteration. This includes any party who wasn't involved in the alteration itself. For instance, if a bank receives a materially altered cheque for encashment, they are considered a stranger. Recognizing this, Section 95 discharges them from any liability on the instrument. In simpler terms, the bank wouldn't be obligated to honor the altered cheque, protecting them from unknowingly facilitating a fraudulent transaction.

However, the NI Act doesn't leave bona fide holders – those who acquired the instrument in good faith and for valuable consideration – without recourse. Section 96 empowers the "holder in due course." This refers to someone who received the instrument without knowledge of the alteration, believing it to be genuine. In the example above, if the tampered cheque ended up in the hands of a business that accepted it for a purchase, they would be considered a holder in due course. Crucially, Section 96 allows this holder to enforce the instrument according to its original tenor – the unaltered content. This means the business could potentially enforce the cheque for its original, intended amount.

The distinction between strangers and holders in due course is crucial. The NI Act recognizes that not everyone involved in a transaction with a materially altered instrument is aware of the tampering. By protecting strangers and empowering bona fide holders, the Act strives for a balance – safeguarding innocent parties while holding those involved in the alteration accountable.

LANDMARK CASES

1. Central Bank of India vs. Ram Narain 1955 AIR 36

In a landmark case, *Central Bank of India vs. Ram Narain* (1955), the Indian courts shed light on what constitutes a material alteration on a negotiable instrument. The case specifically focused on the alteration of a cheque's date. The court's verdict established that changing the date on a cheque qualifies as a material alteration. This decision holds significance because the date on a cheque plays a crucial role in its validity and timeliness for encashment. Altering it disrupts the intended flow of funds as per the original instrument and can potentially lead to fraudulent activities. This case serves as a precedent, clarifying the NI Act's definition of material alteration and emphasizing the importance of maintaining the integrity of the date on negotiable instruments.

2. Punjab National Bank vs. M/s Durga Prasad & Sons

This case clarified that a change in the name of the payee is a material alteration.

III. DISHONOUR OF NEGOTIABLE INSTRUMENTS

MEANING OF DISHONOUR

The smooth functioning of commerce hinges on the reliability of negotiable instruments like cheques and bills of exchange. These instruments represent a promise to pay a specific sum. However, situations can arise where this promise is broken, leading to the dishonour of the instrument. The Negotiable Instruments Act (NI Act) serves as a crucial legal framework in such scenarios.

Section 102 of the NI Act defines dishonour as the refusal of the drawee, the party responsible for making the payment, to either accept or pay the instrument. Imagine a scenario where you receive a cheque as payment

for goods or services. You present the cheque to your bank for encashment, but it's dishonoured. This means the drawee, typically the issuer's bank, has refused to pay the amount on the cheque.

The reasons for dishonour can vary. The NI Act itself outlines various grounds for dishonour, including:

- Insufficient funds in the drawer's account (the one who issued the instrument).
- The drawer stopping payment on the cheque (countermand).
- Discrepancies in crossing mechanisms on cheques, which specify how the cheque can be encashed.
- Not having sufficient stamps affixed to the instrument (a requirement in some cases).

Each reason for dishonour carries its own legal weight and consequences. It's important to note that the burden of proving dishonour falls on the holder of the instrument (Section 101).

Understanding the concept of dishonour and the reasons behind it is crucial for all parties involved in using negotiable instruments. The NI Act provides a clear framework for navigating such situations, ensuring accountability and protecting the rights of both the holder and the parties involved in the instrument.

CONSEQUENCES OF DISHONOUR

The Negotiable Instruments Act (NI Act) establishes clear guidelines for what transpires when a negotiable instrument like a cheque bounces, a situation known as dishonour (Section 102). Dishonour occurs when the drawee, the party responsible for making the payment (usually the issuer's bank), refuses to accept or pay the instrument. This broken promise can have significant legal consequences.

Upon dishonour, the holder of the instrument, the person who rightfully possesses it, is empowered to take legal action against various parties. Section 102 of the NI Act grants the holder the right to sue:

- **The drawer:** This is the person who issued the cheque and is primarily liable for its payment.
- **Endorsers:** These are individuals who have signed the back of the cheque, essentially guaranteeing payment if the drawer defaults.
- **Any other party liable on the instrument:** This could include entities like banks who might have acted as collecting agents and failed in their duties.

By enabling lawsuits against these parties, the NI Act ensures that the holder has avenues to recover the amount owed on the dishonoured instrument. However, the consequences for dishonour go beyond simple lawsuits. The NI Act prescribes specific penalties for dishonouring cheques due to insufficient funds in the drawer's account (Sections 138-142). These sections establish a system of deterrence, aiming to discourage the issuance of cheques without proper backing. The penalties can include:

- **Financial penalties:** The drawer may be liable to pay a fine that can be double the amount of the cheque.
- **Imprisonment:** In some cases, the drawer may face imprisonment for a period of up to two years.
- **A combination of both:** The court may impose both a financial penalty and a jail sentence.

The severity of the penalties can serve as a deterrent against issuing cheques with insufficient funds, promoting responsible financial practices and protecting the integrity of the negotiable instruments system. It's important to remember that navigating dishonour and its legal consequences can be complex. Consulting with a legal professional can be crucial for the holder to understand their rights and pursue the most effective course of action.

LANDMARK CASES

1. Canara Bank vs. M/s Krishna Enterprises Civil Appeal No. 8000 of 2002

This case dealt with the dishonour of a cheque due to insufficiency of funds and the application of penalties under Section 138.

2. State Bank of India vs. M/s New Alipore Electric Works Pvt. Ltd.

This case clarified the legal position on dishonour due to crossing discrepancies.

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