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Prosecution for Dishonour of Cheque – A Critical Analysis

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ABSTRACT

The backlog of dishonor of check cases in India is examined in this study, with a focus on Section 143(3) of the Negotiable Instruments Act of 1881 addresses complaints pertaining to incidents of check dishonor. They must be resolved within sixty days of the petition being filed, per Section 138. They rarely become finalized before three or four years, though, and this has an impact on new investments, business ease, etc. To learn how courts handling Section 138 can imitate the goals and operations of an effective exchange system, the market transaction system is used. Almost every transaction, including repaying loans, salary payments, bill payments, fee payments, etc., uses checks. Every day, banks process and clear the great majority of checks. The determination of checks is to provide evidence of payment. However, despite the current digital migration, checks continue to be a dependable form of settlement for many people. Despite having a swelling demand for digital transactions, cheques are considered as the most reliable method of payment and the default and dishonor is increasing on a greater scale. It has thus become crucial to know the practical challenges and the matters relating to cheque and the related legal provisions. This paper deals in detail with the dishonour of cheque, reasons, essential ingredients, dishonour of cheques by companies, presumptions, cognizance of the offence, jurisdiction, limitation and punishment for dishonour of cheque.

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1. INTRODUCTION

Cheque comes from the Old English word Check, which denotes the device used for checking the amount of an item. According to the dictionary, a check is an order on a specifically printed form to to transfer a certain sum from the drawer's account to a bank. The Black Law definition of a check is a signed document that instructs a bank or financial institution to pay the designated sum of money to the person or organization whose name appears on the check. Nearly all financial transactions, such as loan repayment, paycheck, bill, fee, etc, use checks. Every day, banks process and clear the great majority of checks. The purpose of checks is to provide evidence of payment. However, for many people, checks continue to be a dependable form of payment.

One negotiable instrument is a check. Only the payee has the ability to negotiate crossed and accounts payee checks. It is necessary to deposit the checks into the beneficiary's banking account. The law designates the bank that is mandated to pay the amount as the "drawee," the individual in whose favor the payment check is drawn as the "drawer," and the author of the check is referred to as the "storage."

Dishonor, which comes from the Old French term deshonor, implies to refuse to receive or pay.Check dishonouring is covered under sections 138 to 142 of chapter XVII of the Negotiable Instrument Act of 1881. An offense under section 138 is one that lacks mens rea. In actuality, it is not a crime since, unlike few other crimes, it needs no mens rea; but, because it hinders the public interest, it has been made a crime. Strict liability is one of its features. This paper deals in detail with the dishonour of cheque, reasons, essential ingredients, dishonour of cheques by companies, presumptions, cognizance of the offence, jurisdiction, limitation and punishment for dishonour of cheque.

The former Grindlays Bank, which was already controlled by Standard Bank of South Africa and became Stanbic Bank, was combined with the privatized Uganda Commerce Bank. Stanbic Bank Limited is the new name of the merged bank. In January 2007 [1], the British multinational Barclays Pic [2]. purchased the indigenous Nile Bank Limited and combined it with its already-existing Ugandan operations to create the present-day Barclays Bank. In the beginning, there was no standard form of a check; instead, a bank's customer wrote down his order, or note as it was previously known. The usage of checks grew quickly starting in the middle of the nineteenth century [3]. The Goldsmiths invented the check system. Merchants started giving their money to goldsmiths in order to earn interest on such sums for a variety of reasons. This practice seems to have been initiated just prior to the onset of the civil war in 1642-9. In order to help them pay third parties, they turned to goldsmiths. And that's where checks came from [4]. Written chits sent to him by depositors were honored by the goldsmith [5]. A brief letter authorizing the jeweler to pay the creditor the amount owed would be addressed by the depositor to the goldsmith. After that [6], the creditor would provide this power to the goldsmith and obtain the money in specie.

For his actions, the goldsmith thus maintained accounts for every commercial depositor. There is convincing proof that the goldsmiths used the money left to them in their attempts to operate a banking business to lend money to other businessmen who needed it for their operations. As a result [7], they provided loans to Corrnwell as well as the financially struggling merchants. This demonstrates that the goldsmiths carried out the fundamental duties of contemporary bankers, such as taking deposits of cash or gold at interest, granting loans, and giving their clients the ability to pay third parties.

Translating the dual sovereignty theory to the global sphere immediately results in linguistic circularity if sovereignty is indeed defined as jurisdiction under the doctrine [8]. The reason for this is that the phrase "sovereignty" is frequently used to suggest what initially grants a nation-state jurisdiction, namely that State A has jurisdiction over State A's territory because State A is "sovereign [9]" over it [10]. Consequently, the frequently used combination is "sovereign jurisdiction [11]." Thus, in accordance with the dual sovereignty idea, sovereign jurisdiction is sovereign once more, creating circularity. We must first dissect this circularity. We can start by defining the first "sovereign" in the equation, which is to say, by taking into account the factors that provide a state the authority to exercise its jurisdiction under international law. Here, the first "king" is shorthand that [12], once more, has any true independent analytical power. It refers to a set of state rights 110 acknowledged by global law that, when combined; effectively identify the state as a "state."[13]. One of these rights, for instance, is the authority over a specific geographic area. We might refer to these benefits as "national" entitlements rather than "sovereign" entitlements to prevent unnecessary misunderstandings.

Due to State A's national claim over its territory, which is acknowledged by international law, A has jurisdiction over that territory. Additionally, we can refer to this as State A's [14]"national jurisdiction" rather than its "sovereign jurisdiction." Therefore, in accordance with the dual sovereignty thesis, national entitlement and national jurisdiction are sovereign. It is reasonably obvious which rights are acknowledged by international law as granting a state national jurisdiction [15]. As previously stated, a state may rightfully assert authority over activities that take place, even partially, on its soil.

Subjective territoriality is the term for this [16]. Objective territoriality is the ability of a state to assert authority over non-occurring activities that have an impact on its territory. A state may assert active personality jurisdiction if its citizens are responsible for the alleged crimes. Additionally, a state may assert passive personality jurisdiction if the acts inflict harm on its citizens [17].

Furthermore, a state may assert jurisdiction over actions that threaten its security and/or its capacity to perform official state duties, such the sole right to produce state currency, under the protective principle.

Each of these rights clearly relates to the state asserting sovereignty, whether it is over its territory, the protection or punishment of its citizens, or the affirmation of its status as a state.

Additionally, there may be several states with national authority over a certain activity because international law recognizes several national entitlements [18]. As a result [19], Germany may assert jurisdiction over actions taken by German nationals in the US, but the US may also do so. There are national authorities that overlap or operate concurrently in these situations. However, the list of national rights also limits state authority. Although the entitlements permit the application of one state's laws to activities occurring in other states, such as when foreign activity impacts the territory of the first state or involves its citizens, such extraterritorial mandatory jurisdiction still necessitates a quantifiable and objective connection to the national entitlements of the first state. For example [20], if there is no connection, Germany cannot enforce its racial slurs laws against American citizens who speak solely in the US and have no ties to Germany. Lastly, under international law, a state has a fair amount of latitude to use its legislative authority however it sees fit, as long as it stays within the bounds of its domestic jurisdiction. International law gives states considerable latitude to regulate any behavior they believe warrants regulation in essentially any regulatory language they choose, with one notable restriction that it cannot prescribe laws that are in conflict

with international law (for instance, a state may not, under worldwide law, legally recognized endorse or permit genocide).

Therefore, Germany asserts jurisdiction over activities that take place in Germany or involve German citizens, while the United States asserts authority over acts that take place in the United States or involve U.S [21]. nationals. Furthermore, both the US and Germany are free to enact laws that criminalize almost any behavior they like as long as it occurs within their borders or affects their citizens, and they can do it on any terms they choose. In conclusion, there are several basis of national jurisdiction in international law. These bases of authority, or sources for lawmaking authority [22], come from a state's autonomous national rights as acknowledged by international legislation; these rights include the state's sovereignty over its territory and the right to defend and punish its citizens.

Furthermore, governments are essentially free to use their domestic legal system however they see appropriate, defining crimes in accordance with their own distinct and autonomous legal prerogatives, when they choose to regulate activities that fall under their national jurisdiction. Therefore, a state practices its own national rights when it declares a violation of its laws and uses its adjudicative and enforcement authority to bring charges against the offender. To use the Supreme Court's words, we may also state that it "is exercising its own sovereignty, not that of... other sovereigns [23]."

The foundation of business transactions are negotiable instruments, which serves as accepted legal alternatives to cash. Their application encourages continuity, efficiency, and security in credit-based transactions—all of which are critical to both local and foreign trade. These tools, which include bills of exchange, promises, and checks, are essential for maintaining liquidity because they let companies efficiently manage their cash flow and function as capital without depending entirely on hard money. Negotiable instruments are used by companies of all sizes, but particularly by small and medium-sized firms (SMEs) [24], as both loan instruments and legally binding documentation of financial commitments. The importance of negotiable instruments is further enhanced in emerging nations like India [25], where a sizable portion of trade is carried out on a credit basis [26].

These documents serve as official guarantees in this scenario, giving merchants and service suppliers the ability to offer credit with some level of certainty and redress in the event of default. Their flexibility and legal acceptability boost business confidence, lower the chance of non-payment, and facilitate the organized and legally sound resolution of debts [27].

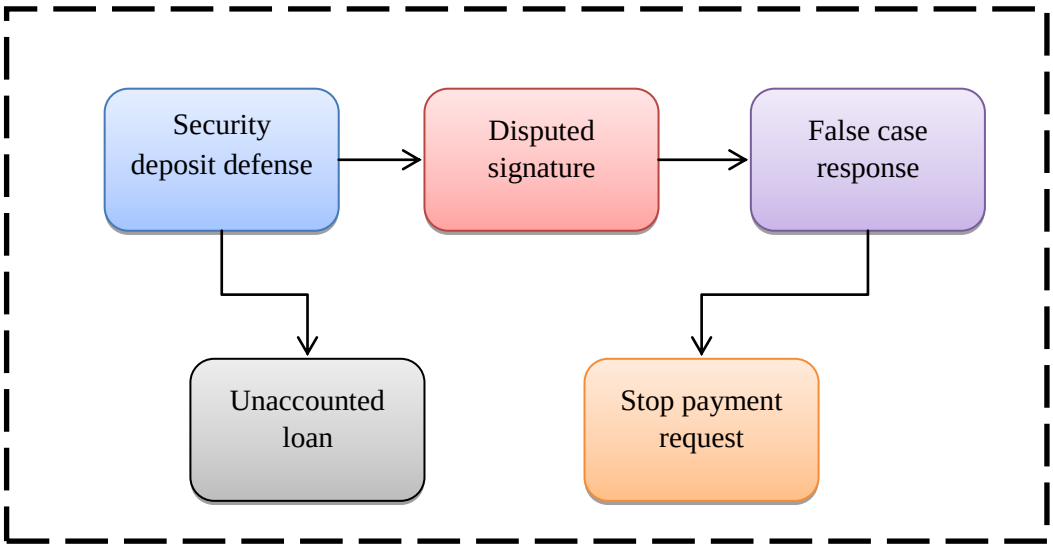

Figure 1. Defense of Security Deposits

One of the main ways to prove that a check bounce case does not violate Section 138 of the N.I [28] Act is to show that the check was given as a security deposit rather than as payment for a debt or liability in Figure 1. For instance, it could be argued that the check was not meant to be cashed unless specific conditions were satisfied or damages were suffered if it was delivered as genuine cash or security against potential harm.

The 3rd Indian Law Commission first developed the Negotiable Instruments Act of 1881, in 1866 [29]. It was submitted to a Selection Panel and then presented to the Council in December 1867. After being

submitted to the Council, the fourth draft—known as the Negotiable Instruments Act of 1881—was passed into law.

The Act was passed in an effort to unify the laws governing checks, bills of exchange, and promissory notes. The Act's primary goal was to formalize the process by which the instruments it imagined may be exchanged like other things through discussion. The Act also aimed to promote the practice of using checks and increase the legitimacy.

In its wisdom, the Parliament decided to add section 138 to the Statute book to enforce financial responsibility in commercial transactions.

Before section 138 of the Negotiable Instruments Act was added, the only way for the individual who was wronged by a dishonoured cheque to get their money back was to make a claim. Because the new provisions in the Act were intended to instill [30] a sense of ownership in those involved in business dealings, any failure to uphold one's end of the bargain could result in a criminal charge under the new sections of the law. In many business dealings in our nation, it has been seen that checks were written, even if simply as a means of delaying or even cheating debtors. The legitimacy and sanctity of issuing checks in business dealings were significantly damaged. The aforementioned regulations were enacted by the Parliament in an effort to restore the legitimacy of checks as a reliable alternative to cash payments.

The Civil Court remedy is a drawn-out process, and a dishonest drawing typically uses a variety of arguments to refute the payee's legitimate claim.

The drawer ought to have drawn the check as fulfillment of a legal obligation to settle the outstanding debt. As a result, any check provided, for example, as a gift, would not be covered by this clause. Since it should be a legally binding debt, time-barred debt and money-lending operations are outside of its purview. The phrase "any debt or any other obligation" that appears in section 138 makes it abundantly evident that it does not refer to any specific debt or liability. Once a check is issued, the court must assume that there was some obligation or liability in all of these situations. The burden of proof will rest with the accused. For example, there isn't any debt or other.

2. RELATED WORKS

To give one well-known example, Spain has a specific double jeopardy prohibition in its universal jurisdiction law. It restricts the application of universal jurisdiction to circumstances in which "the defendant has not been absolved, forgiven, or convicted in another country, or in the last case, that imprisonment has not been completed," according to codified law 69. Spanish courts have expounded on the jurisdictional justification for this restriction on double jeopardy. During the Peruvian Genocide case, the Spanish Supreme Court noted that "the necessity of judiciary intervention pursuant to the premise of universal jurisdiction over former Peruvian Prime Minister Alberto Fujimori [301]."Iurisdiction is not included when the territory in question successfully prosecutes the universally recognized offense inside its own borders. According to the doctrine of this Article, the Court clarified that the iurisdictional exclusion concept "is formed by the very nature of universal jurisdiction." The case dismissed because Spanish responsibility was "excluded" because the accused was the subject of an independent prosecution by Peru, the state with national character. The Constitutional Court more recently invoked Article 23.4's double jeopardy provision in the Guatemala Genocide Case to address worries about jurisdictional competition brought on by universal jurisdiction.

"Negotiable" refers to something the "instrument" refers to a written agreement that gives someone a right, which can be transferred from one person to another in exchange for money. Therefore, any document that grants someone a certain amount of money that can be transmitted (like money) by delivery qualifies as a "negotiable instrument". Therefore, a deliverable document is a negotiable instrument. The phrase "negotiable instrument" is not defined in Section 13 of the Negotiable Instruments Act of 1881 because it refers to a promissory note, bill of exchange, or check payable to the bearer or to order in this sense. Although the transferor's title may be flawed, the main difference between an instrument of negotiation and other documents (or commodities) is that in the former case, the party receiving the instrument obtains a good title for consideration and in good faith, whereas in the latter case, the transferee receives a title that is comparable to, or, to put it another way, no better than, the transferor's. The Negotiable Instruments Act, 1881, which applies to all of India, went into force on March 1st, 1881 [32].

By streamlining trial procedures and improving the penal sanctions under Section 138, the negotiations (Change and Miscellaneous sanctions) Act, 2002 made it simpler for payees to seek legal remedies without experiencing unreasonable delays. It strengthened enforcement procedures by enabling speedy trials and presumptive intent to defraud. A 2015 amendment was enacted in response to the Supreme Court's ruling in Dashrath Rupsingh Rathod v. State of Maharashtra, which restricted jurisdiction in instances involving bounced checks to the location where the check was dishonoured. By making it clear that the court where the check was brought for collection has jurisdiction, this modification addressed real-world issues

with petition filing and reduced litigation backlogs. Another significant adjustment was made in 2018 that gave courts the authority to provide remedy while the case is pending by allowing for interim payments of up to 20% of the check amount under Section 143A [33]. In addition, Section 148 was changed to enable appellate courts to mandate a 20% minimum deposit of the trial court's fine or award in cases where a conviction is contested. These clauses were designed to cut down on pointless arguments and inefficiencies. These cumulative developments show how the NI Act has maintained commercial integrity and strengthened public confidence in paper-based financial instruments by keeping up with India's changing business realities and adjusting to issues like check fraud, judicial delays, and jurisdictional ambiguities.

Similar to this, cybercrime in Pakistan encompasses a wide range of illegal activities, such as online harassment, hacking, data theft, financial corruption, monetary laundering, the spread of malicious software, and computerized terrorism. According to the Federal Investigation Agency's Cybercrime Cell, these crimes are committed by men using a variety of tactics, and the majority of the perpetrators are between the ages of 18 and 28. It follows that it is unattainable to provide comprehensive implied duties; instead, in any given case, the court will focus on specifics of the contract or tort, the parties' closeness, fairness, and justice regarding a given fact, rather than issues related to the relationship that exists between banks and their customers. Both common law and the Act impose obligations on us, such as the bank's need to reimburse the branch where the account is maintained. This could be a legal obligation or an agreement. A breach of the duty of confidentiality results in damages since other responsibilities arising out of contracts are legal and not just moral, such as the duty of care13. There are several exceptions to a bank's duties, including common law and legal obligations resulting from contracts and relationships of confidence and trust between banks and their clients to exercise those obligations in a morally and legally responsible manner. Unlike tortious common law, government will require stringent compliance when a bank is subject to duties. It has been said that a bank and a customer shouldn't be in a contentious scenario that could affect their relationship and obligations, and if they are, they should set up procedures for resolving disagreements resulting from claims. But throughout their connection, the responsibilities must be considered.

India's judiciary operates slowly due to a significant backlog of cases. More over 41 million cases were open in district courts as of December 8, 2021 (National Judicial Data Grid, n.d.). An estimated 1.5% of India's GDP is lost each year as a result of judicial delays (Dey 2016). Additionally, slow judges have a negative impact on citizens' quality of life as well as the efficiency and structure of markets. Thus, it should come as no surprise that Indian judges and policymakers now consider addressing judicial delays to be of utmost importance. Courts are considered to be overburdened in part by the several actions under the Negotiable Instruments Act of 1881 (NI Act).One Article 138 makes it explicit that if a check sent out to satisfy a debt or liability arrives underpaid due to a lack of currency or credit, the payer faces up to two years in detention, a fine equivalent to twice the check amount, or both. This is one of the provisions in the NI Act that could cause a disagreement. The Law Commission of India reports that they account for 6.5% and 7.8% of every institution and pending in Indian courts, correspondingly, in accordance with a ruling by the Supreme Court of India.

The DAKSH database, which contains 67,000 cases from Indian courts, shows the trend of cases involving check dishonor in India light of the growing number of NI Act cases and their frequent mention as a primary source of judicial delays. She discovered that resolution is typically postponed for far longer than the 180-day period required by statute. In order to determine the percentage of cases that remain unresolved within the allotted time, We also use 50,000 case level data for eight States and two Union Territories to assess the survival likelihood (using non-parametric Kaplan-Meier estimations). According to our estimation, less than 20% of cases are settled in the 180 days that are given. Given this background, this work seeks to achieve four objectives. First, we use case-level eCourts data to assess the actual court burden brought on by the NI Act in India for the first time. Second, we calculate the typical case disposal time as well as how it varies over time and between states. Third, we develop an analytical structure to demonstrate how particular case attributes and procedural delay is related. Additionally, we use regression analysis to put our conceptual structure of procedural variables of case disposal time to the test practically. While taking into consideration the inherent qualities of judges and courts, we employ case level interim and final orders data to demonstrate the connection between procedural challenges and specific case aspects. At the moment, the majority of the empirical research on the length of court proceedings focuses on national and court-level variables, including the number of judges, pipelines, and governmental court spending. The case level factors, such as the number of parties and pleadings, are also the subject of certain research. We concentrate on the case features that can be specifically addressed with process reforms as we have access to the data from intermediate and final orders.

The 2015 Negotiable Instruments Bill, which was passed by the Parliament in December of that year, is also examined. The modification's primary objective was to clarify jurisdiction-related issues for bringing legal action for offenses under § 138 of the Negotiable Instruments Act, 1881. Additionally, it

required that cases against the same drawer be centralized. Even though there was no evidence-based understanding of the reasons behind protracted trials, these modifications were specifically designed to speed up judicial proceedings. Using regression analysis, we examine the impact of the 2015 amendment by contrasting the length of time cases were processed before to and following its introduction. At least for the States for which we collected the data, our research allows us to assess the efficacy of these reforms.

According to our calculations, cases involving cheque dishonour account for 14.2% of India's pending and resolved court workload. This figure might be understated because orders were either unavailable or unparsable in roughly 38% of the sample situations. Significant differences in case disposal times between states are also observed. The median disposal time is 295 days, with the lowest being 318 days in Karnataka and the highest being 347 days in Himachal Pradesh. Additionally, we discover that just 5% of cases are resolved within the allotted six months. Our results indicate that, assuming all other factors remain constant; cases in which the accused does not show up take an extra 301 days and six hearings to resolve. This is after adjusting for State and year fixed effects. Similar to summary trials, summons trials require 6.4 hearings and 212 days to complete. Despite requiring more hearings, disputed cases are resolved in fewer days than uncontested cases. Our findings also show that the 2014 revisions resulted in a considerable reduction in case duration, with the period being shortened by over six months.

By making cases compoundable and allowing for a brief trial, the revisions sought to expedite the resolution of cases involving check dishonor. Additionally, the one-year penalty under § 138 was increased to two years. The purpose of these legal changes was to promote the use of checks in order to guarantee regular commercial dealings and liability settlement. The Lok Sabha Standing Committee on Finance examined the proposed revisions and suggested that, in light of the heavy workload on courts, they be combined with the establishment of specialized courts for § 138 matters.10. But specialized courts were not included in the later Amending Act.

Cheque

According to the Black Law Dictionary, a check is a signed instrument that directs a financial institution such as a bank to pay the specified amount of money to the individual or entity whose name appears on the check [34]. Almost every transaction, including loan repayment, salary payments, bill payments, fee payments, etc., uses checks. Every day, banks process and clear the great majority of checks. The purpose of checks is to provide evidence of payment. However, for many people, checks continue to be a dependable form of transaction.

One negotiable instrument is a check. "Check." A "cheque" is defined in Section 6 of the Negotiable Instrument Act, 1881, as a bill of exchange drawn on a designated banker that is not stated to be payable in any other way except upon demand. This definition also covers an electronic picture of a truncated check and an electronic check. A check is a written document that directs a bank to transfer a certain amount of funds from an individual's account to the designated recipient.Only the payee has the ability to negotiate crossed and account payee checks. It is necessary to deposit the checks into the recipient's financial account.

A form of bill of exchange, checks were created as a means of payment without requiring the carrying of substantial sums of cash. A check is an agreement that can be negotiated that directs the bank to pay a certain amount of money from a defined transactional account that is kept in the drawer's identity with that organization. According to the law, the person in whose favor the check is drawn is referred to as the "drawer," the bank that is ordered to pay the amount is referred to as the "the beneficiary," and the author of the check is referred to as the "cabinet."

Disgrace of Cheque

A dishonoured cheque is useless and cannot be recovered for its full amount. The most common reasons why checks are returned are that the drawer's bank has been frozen or restricted, or that there were not enough funds in the drawer's account at the time the check was redeemed. When a check made on an account with not enough money bounces, it's referred to as a "rubber check."When a consumer issues a check that is returned, banks usually charge them; in certain areas, this is illegal. Additionally, a drawer can place a stop on a check, telling the financial company not to honor that specific check.

Motives for Disgrace of Cheque

- Inadequate funds,
- a mismatched autograph,
- justification closure,
- check vacant after three months,
- the recompense immobile by the account pocket,

- discrepancy
- falling out and
- graphs on the check,
- joint excuse situations where both monograms are needed
- but only one is present,
- consumers demise,
- consumers foolishness,
- and overdraft limit journey

Disgrace of Cheque by Non-Payment

Section 92 of the Negotiated Instruments Act of 1881 states that if the person who made the note accepts the bill, the check is deemed dishonoured by non-payment, or drew the check defaults on payment after being legally obliged to do so.

Announcement for Dishonour of Cheque

According to the Negotiable Instruments Act of 1881, the holder or any party still responsible for the check must notify all other parties that he wishes to hold severally liable for the check as well as one or more of the parties that he wishes to hold jointly liable if the check is returned for non-acceptance or non-payment for the check. A properly authorized representative of the person to whom the notice of dishonor is due, his legal representative in the event that he has passed away, or his assignee in the event that he has been adjudged insolvent may all receive it. A written or verbal notice of dishonor is possible. A written notice of dishonour may be transmitted by mail or in any other method, but it must expressly or reasonably intend to inform the recipient that the instrument has been rejected, how it was dishonoured, and that it will be his responsibility. Upon dishonor, it must be sent within a reasonable amount of time to the intended recipient's home or place of employment. Section 94 of the Negotiable Instruments Act of 1881 states that a notification is not considered invalid if it is correctly addressed, sent by mail, and stumbles. Section 94 of the Negotiable Instruments Act of 1881 does not need a notification of dishonor.

- When the person entitled to it chooses not to use it;
- When he has countermanded payment, the drawer must be charged;
- When the accused party was unable to receive damages due to a lack of notification;
- when the person who is required to give notice is unable to do so for whatever cause, without fault of his own, or when the party due to notice cannot be located following a thorough search;
- When the acceptor is also a drawer, the drawers will be charged;
- In the event of a non-negotiable promissory note;
- When the person who gets the notice, aware of the facts, unconditionally pledges to pay the amount owed on the document.

Disgrace of Cheque for Failure of Funds

Check dishonouring is covered under sections 138 to 142 of chapter XVII of the Negotiable Instrument Act of 1881. An offense under section 138 is one that lacks mens rea.In actuality, it is not a crime since, unlike few other crimes, it requires no mens rea; but, because it hinders the public interest, it has been made a crime. Strict liability is among its features. Civil liability has been transformed into a criminal offense by Section 138. The parliament introduced this with the intention of making a person criminally liable for his actions in business interactions and trade with individuals that are conducted negligently or without a feeling of responsibilities.

The restrictions of section 138 will only apply if the check is written to pay off a debt or other legally binding obligation. The recipient of the returned check is not penalized if it was provided as a gift, present, or donation. The court may grant the complainant compensation under Section 357 of the 1973 Code of Criminal Procedure, and the total amount of reimbursement that may be granted is unlimited.

Typical Qualities of Negotiable Tools:

The following are characteristics of a negotiable tool:

o Transference: An instrument of negotiation can be freely transferred as many times as necessary until it matures. Delivering the document is sufficient if the phrase is "due to bearer." However, it must be endorsed and delivered if it is "due to order." In addition to receiving money, the transferee of the note of exchange also gains the ability to transfer the instrument again.

- Autonomous Title: The standard property transfer rule, which states Negotiable instruments are exempt from the rule that no one can offer a greater title than what he already has. The transferee will have a good title to the negotiable instrument if the transferor gained it through deception and the transferee accepts it for value in good faith (bona fide). As a result, when it comes to a negotiable document, the transferor's and the transferee's titles differ. Additionally, the nemo dat quod non habet theory—which holds that no one can issue a stronger title than she herself has—does not apply to situations involving negotiable instruments.
- Unpredictability: The price of a carrier without luggage is negotiable. A negotiable document must be drafted in the fewest possible words while still utilizing the language necessary to provide a clear and precise contract. A negotiable document must be free of any restrictions that might significantly impair its circulation. Additionally, a sale agreement must stipulate that a certain sum of money, either fixed or definite, must be paid.
- Right to Sue: If the transferee (payee) surrenders the contractual document, the party (drawer) who is in charge of making or honoring the payment under a negotiable instrument does not need to be informed. Without informing the original debtor of the transfer—that is, without informing them that the transfer now owns the negotiable vehicle—the transferee may, in the case of dishonor, bring a lawsuit against the tool of negotiating in its own name.
- As stated in Sections 118 and 119 of the Negotiations documents Act of 1881, certain presumptions apply to all negotiable documents.

Essential Elements

The following are the main components of Sec138:-

1. A person drawing out a check for a loan or other obligation.
2. The check must be presented to the institution within six months of the date of drawing or throughout the check's validity term.
3. The drawee bank returning the check that was not paid.
4. Within 30 days of receiving information about the return of the check as unpaid, send a written notice to the check drawer in the form of a return memo or debit advance.
5. The drawer's inability to pay within 15 days of receiving notification

Only when the check is issued to settle a bill or other legally enforceable obligation will the provisions of section 138 be drawn into play. If a check that is returned is one that was given as a gift, present, or contribution, the maker is not subject to persecution.

Only after notice is delivered and the appropriate payment is not paid does the offense become complete. The Supreme Court has ruled time and again that a check's drawee can only establish a cause of action to sue under section 138 if the drawer is informed of the check's dishonor and does not pay the check within the 15 days after picking up the summons.Section 138 of the 1881 Negotiable Instruments Act states, letters submitted by the complainant may be interpreted as notice. On the sixteenth day, a complaint may be filed. Notice does not required to be sent via registered mail; a letter or notice sent with a certificate of posting is assumed to have reached the accused. Under Section 138, a notice served on the corporation that does not include the MD and director, who is parties to the lawsuit, is legal. It is sufficient to give a sufficiently correct address notice. It can be assumed that the addressee has received a notice that he has declined to sign.

The check's drawer is solely responsible. It is even true that the first accused issued the check in order to satisfy the petitioner's or second accused company's debt. Since it is not the drawer's fault, the second accused corporation is still exempt from prosecution.

138 will lie if a shared account check is returned with the notation, "signature required from another director." The check that was returned with the message, "account operations jointly, another director signature required," is dishonorable. The offense is complete even if a warning is given to halt payment prior to the payee deposits the check in his bank. The complaint timescale of one month in the event of dishonor of check will begin on the day following the fifteen-day window that begins on the day the drawer gets the alert.

Disgrace of Cheques by Corporations

Anyone who was in charge of and accountable to the company for the conduct of the company's business at the time of the offense will be considered guilty of the offense and will be subject to prosecution and punishment if the person committing the section 138 offense is a company (anybody corporate, that include a firm or other association of persons).

If the individual can demonstrate that the offense was committed without his permission or that he took all reasonable precautions to stop it from happening, he will not be punished. A person is not subject to prosecution if he is appointed as the director of a company because he holds an office or job in the federal

government, state government, or a financial corporation that is owned or controlled by either of these entities, as the case may be.

If a company is found guilty of dishonouring checks under this Act and it is demonstrated that the offence was committed with the knowledge or cooperation of, or was caused by, the negligence of, any director (in the case of a firm, this means someone else in the firm), supervisor, secretary, or other officer of the company, then the director, manager, secretary, or other officer will also be considered guilty of the offence and will be subject to prosecution and punishment.

The Honorable Supreme Court has ruled that a person is not liable under section 141 of the Act just because they are a director of a company. A director is not considered to be the head of or answerable to the corporation for how its business is conducted. Section 141 stipulates that the individual who is to be held accountable must be in charge of and accountable for the company's operations during the relevant period. This must be proven to be true, and in certain situations, a director is not considered liable. The high court has also ruled that in order for the company's directors to be held accountable for a violation of Section 138, the claim must include specific accusations against the directors about their role as managers and accountability for the company's operations. It is insufficient to merely claim in the complaint that the accused are the company's directors and accountable executives.

In order to start legal action against the accused (partners) for an offense under section 138 of the NI Act, it must be claimed in the complaint that they were in charge of and accountable to the partnership entity for the conduct of its activities at the relevant time. The offense against the accused or partners could not be proven in the absence of the necessary allegations in the charge.

Assumptions in Shame of Cheque

The presumptions in favor of the holder is established by Section 138 of the NI Act, 1881, which states that unless the opposite is demonstrated, it is assumed that the holder of a check received the type of check mentioned in Section 138 for the whole or partial payment of any debt or other liabilities.

The result of these assumptions is that the defendant bears the burden of demonstrating that the complainant did not receive the check in order to absolve them of any responsibility. Since the court must presume the drawer's obligation for the sums for which the checks are made, the two parts 138 and 139 mandate this. In every case where the lawful basis for the presumption's raising has been demonstrated, the courts are required to invoke it. It shifted the burden of proof to the accused and created an exemption to the normal rule regarding it in court proceedings."

Cognizance of the Offence

According to Section 142, courts will only consider offenses punishable under Section 138 if the payee or, if applicable, the holder files a complaint within the reasonable time frame specified in the check. Within one month of the day the cause of action occurred, that is, after the person who drew the check failed to pay the sum within 15 days of receiving notification of its dishonor, the complaint must be lodged in writing. No offense punishable under section 138 may be tried in a court lower than that of an urban magistrate or a Judicial Magistrate of the first class.

The modification of 2002 gave courts the authority to waive the one-month period that the Act stipulates for taking cognizance of a case. If the complainant can convince the court that he had good reason to not file a complaint within that time, the court may take cognizance of the complaint after the time frame specified. When taking cognizance, the magistrate must investigate whether or not the elements of an offense have been proven. There is no basis for the payee to hold the drawer criminally accountable as long as the notice period is still in effect.

Jurisdiction in Dishonour of Cheque

You can make a complaint at any of the locations listed below. Section 138 of the Act allows one of the courts with jurisdiction over one of the five local areas to serve as the trial site for the offense.

1. Where the cheque was drawn.
2. Where the cheque was presented for encashment.
3. Where the cheque was returned unpaid by drawee bank.
4. Where notice in writing was given to drawer of cheque demanding payment
5. When the check drawer did not pay after 15 days of receiving the notice.

Restrictions

The definition of "debt or other liability" in section 138 makes it abundantly evident that it refers to a debt or other duty that is recoverable by law.

"Unless issuance of cheque is pleaded and proved to discharge a legally enforceable liability, dishonour is no default entailing criminal proceedings. Complaint in respect of such a cheque issued as a gift, is not maintainable."[1]

"It is only debts alive at the time when the cheque dishonoured are issued. Any subsequent claims in favour of the complainant cannot be made the subject of dispute under section 138 NI Act".[2]

Strict adherence to the time frame specified in the statute is required. Any failure to follow the schedule will result in a basis of action under Section 138. The courts are unable to tolerate the time constraints imposed. The following are the constraints that must be remembered and considered:

- The check must be submitted to the bank during its validity period in order to be cashed.
- A notice requesting the amount of the dishonoured cheque must be delivered within fifteen days of receiving the return memo stating the reason for dishonour.
- A complaint shall be submitted to the appropriate court with jurisdiction within a month if the drawer fails to pay the amount of the dishonoured check within the grace period.

The legal heirs of the person who issued the check cannot be the target of proceedings in the formal complaint alleging an offense under section 138. When the initial complainant passed away after the complaint was filed, the processes continued, and the deceased's son was added as a complainant once the offenses were acknowledged.

His heirs have the right to pursue the case further.

Punishment for Dishonour of Cheque

Penalty under section 138 of the N.I. Act for the accused if found guilty:

1. A maximum sentence of two years in prison
2. A fine equal to twice the value of the returned check.

In addition to the penalties, the complainant may receive compensation from the court under section 357 of the 1973 Code of Civil Procedure; the sum of payment is not limited. The 2002 amendment raised the maximum sentence to two years in prison [35-39]. An offense pertaining to the dishonor of a check and all other offenses punishable under the Act Concerning Negotiable.

Instruments, 1881, are compoundable (i.e., can be addressed privately) by a supplement enacted in 2002 under Section 147.

The High Court of Delhi has also ruled that as procedures under section 138 of the NI Act are quasi-criminal in their nature, the courts should respect a settlement reached by the parties while the issue is still pending.

3. CONCLUSION

Almost every transaction, including loan repayment, salary payments, bill payments, fee payments, etc., uses checks. Banks handle and pass the vast majority of checks every day. The purpose of checks is to provide evidence of payment. However, for many people, checks continue to be a dependable form of settlement.

These days, check bounces are not unusual. Checks are used for the majority of transactions, whether they involve loan repayment or business costs. These large-amount checks are occasionally returned by the financial institution on which they are drawn because they have not been paid. Section 138 of the Negotiable Instruments Act of 1881 (henceforth the Act) provides for penalty in such circumstances. Dishonoring a check, as defined by Section 138 of the Act, is a criminal offense.

In the case of dishonouring checks due to insufficient funds in an individual's banker account, Section 138 establishes a statutory offense. It turns dishonouring checks due to inadequate funds into a formal offense. Mens rea is not necessary in situations involving dishonor of checks. The offense under 138 is predicated on an instrument of negotiation but lacks mens rea.

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