

VICTIMS RIGHTS OF CHEQUE DISHONOUR IN PRESENT LEGAL SCENARIO

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Abstract

The legal framework relating to cheque dishonour in the contemporary context addresses the rights and protections to be given to the victims. Cheque dishonour, a significant issue in commercial transactions, is governed by various laws aimed at protecting the interests of payers and maintaining confidence in financial transactions. Overall, the current legal landscape provides a comprehensive framework that not only protects the rights of victims but also promotes financial discipline and trust in commercial transactions. Through stringent legal provisions and timely enforcement, the system seeks to ensure that victims of cheque dishonour get proper redressal and maintain their confidence in the financial system.

Keywords: Financial system, Cheque dishonor, Amount, Redressal etc.

2.1 Introduction

CHEQUE dishonor is a legal offense when a person promises to give a Cheque, but when received dishonors it, i.e. does not deposit the promised amount or does not contain sufficient funds. In case of CHEQUE dishonor, the victim is entitled to several legal rights. Here are some legal scenarios that attempt to keep victims safe in this case:

Transfer of place of residence (for grateful citizens): If the CHEQUE is dishonored and the grateful citizen moves to a new place, he should inform the same to the police station of the new police station. This guarantees him safety at the new place.

Filing a report at the police station: In case of CHEQUE dishonor, the victim should go to his local police station and lodge a report. This report is a government document that shows the quality of your CHEQUE dishonor case.

Initiation of judicial process: The aggrieved person must file a petition at the appropriate judicial venue to initiate the judicial process. This empowers him to protect his rights in a more structured manner.

Compliance with judicial decision: If the CHEQUE remains dishonored even after the judicial process, then on the basis of judicial decision the victim has the right to take immediate steps to recover the amount.

The security of the people in a state is the responsibility of the state machinery. It is the state which is responsible for the security of all human beings and the unity and integrity of the nation. If a person's human dignity is not respected it means that the person can be victimized. Violation of human morals and codes of conduct often leads to anarchy. It is the primary responsibility of the state to maintain law and order in the society so that people can enjoy a peaceful environment.

Nowadays people find themselves in a helpless situation as serious and violent crimes are on the rise. There are various crime situations that result in harassment. All around us we see victims of violent crimes, victims of socio-economic crimes, victims of terrorism, victims of organized crimes, victims of international crimes, victims of weaker sections like sexual crimes, sexual harassment, domestic violence, acid attack, etc. let's see. Victims of trafficking, prostitution, outraging the modesty of women, voyeurism, stalking, etc., children victims of abuse, trafficking, child pornography, prostitution, child exploitation, etc., and from deprived sections like the poor, socially/educationally backward, etc. Hunt.

Even world governments today are facing grave and serious crimes that are affecting economic and social conditions, reflecting grave consequences. Drug trafficking, human trafficking, smuggling, firearms, terrorism, cyber crimes, don/mafia/underworld, crime syndicates (meeting unlawful public demands like prostitution, drug availability etc.), predatory crimes, racketeering (trade labor rackets, prostitution racket), gambling, menace of online gambling, kidney for cash business racket, fake certificate racket etc.) are some examples of the dangerous dimensions of these borderless crimes and the dangers involved in them and their destructive powers which pose a major threat to mankind. produce. Complete. These are deadly crimes that affect the economic fabric and social structure of global society, resulting in the exploitation of vulnerable people globally.

International relations are also changing as broader cooperation of civilized states is required to mitigate and mitigate the deadly consequences of these crimes and to achieve desired outcomes for the victims of these grave and serious crimes. These crimes create major hindrances in development whether it is social or economic development, progress of society and benefit of mankind. These crimes pose a major threat to justice and human dignity, which is

the basis of any international document on fundamental human rights, be it the International Covenant on Economic Social and Cultural Rights (ICESCR, 1966), the Universal Declaration of Human Rights (UDHR, 1948) International Covenant on Civil and Political Rights (ICCPR, 1966) etc.

2.2 Who are the victims?

In simple words victimization of crime means any person or group of persons suffering any loss as a result of a crime committed by known or unknown persons. This includes spouse, children, parents and other legal representatives. It has not been defined by the Indian legislature in any statute as of 2008¹. However, recently the term has been defined by the Code of Criminal Procedure (Amendment) Act, 2008.

In section 2 (WA) of the Code of Criminal Procedure Act, 1973, "victim" means a person who suffers any loss or injury by reason of the act or omission with which the accused person is charged and the expression "victim" . This includes his guardians or legal heirs.²

A victim is a person who has been sentenced to death or made a victim of misfortune by someone else; Who causes severe suffering to body or property through cruel or oppressive treatment; who is destined to suffer under some oppressive or destructive agency; One who gets destroyed due to any enterprise or work done voluntarily or suffers from health etc.³

Collins English Dictionary defines the word 'suffer' as a person or thing that suffers harm, death, etc., from another or from some adverse action, circumstance, etc. Furthermore, according to the New Webster's Dictionary, 'victim' means a person destroyed, sacrificed, or injured by another, or by some condition or agency; One who has been deceived or defrauded; A living being is sacrificed to a deity, or in the performance of a religious ritual. The American Heritage Dictionary defines a victim as a person who is put to death or subjected to torture or suffering by another, further providing that any person who is subjected to torture by any act, circumstance, agency or condition is harmed or suffered by: a victim of war, or a person who suffers injury, loss or death as a result of a voluntary undertaking: a victim of one's own conspiracy or a person who is deceived, swindled or taken advantage of Raised: A hoax. 1 Due to the lawyers' agitation, some provisions of this Act relating to arrest, bail and adjournment have been kept in abeyance for the time being and will be implemented after a new notification.

The United Nations Congress on the Prevention of Crime and the Treatment of Offenders took up this issue and contributed significantly to the drafting of the Declaration on the Rights of Victims. The United Nations General Assembly's Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in November 1985, gives a very broad definition of the phrase as follows:

Article 1: 'Victim' means persons who, individually or collectively, have suffered harm through acts or omissions which involve physical or mental injury, emotional distress, economic loss or substantial impairment of their fundamental rights. Member States, including those with laws prohibiting criminal abuse of power.

Article 2: A person may be treated as a victim under this Declaration regardless of whether the perpetrator has been identified, apprehended, prosecuted or convicted... In the word 'victim', where appropriate, also includes the immediate family or dependents of the direct victim and persons who have had to intervene to assist the victim in crisis or to stop the abuse.

In the United States, as defined under Section 3771(e) of the Justice for All Act of 2004, a victim is a person who has suffered direct and proximate harm as a result of a federal crime. Arizona⁴ defines a victim as the person against whom a criminal offense has been committed or, if the victim is deceased or incapacitated, the victim's spouse, parent, child, or other legal representative. Wisconsin defines a victim as a person against whom a criminal act or crime has been committed. One of the few definitions that exists under English law is found under section 7(7) of the Human Rights Act, which defines a victim as helpless in the context of Article 34 of the European Convention. However for the purposes of the Act it also includes a person whose rights under the Act have been violated as a result of an act of a public authority contrary to section 6 of the Act.⁵

2.2.1 Victims of Crimes and their Position

B. Mendelsohn and Von Hentig started studying victims of crimes in regard to relationship between them. As a result that resulted into the framing of typologies of victims. The study of Mendelsohn depicts victim culpability and that of Von Hentig suggest victim proneness. The study of victim culpability as suggested by Mendelsohn was first

¹ Enforced with effect from 31 December, 2009.

² The *Code of Criminal Procedure (Amendment) Act*, 2008.

³ Meaning of the term 'victim' according to the Oxford Dictionary, available at: <http://www.nhrc.nic.in/speeches.htm>.

⁴ Arizona Revised Statute 13-4401

⁵ Doak Jonathan, *Victims Rights, Human Rights and Criminal Justice, Reconceiving the Role of Third Parties*, Oxford and Portland Oregon, 2008, p. 20.

of all published in a Belgian Criminal Law Journal in 1937 in which he surveyed criminals, victims attitude in attracting criminals and the responses of the families of victims and criminals. He put stress on the study of victim offender relationship more critically than the material evidence itself. The result of the study of Von Hentig, regarding victim proneness, was published in 1941 in an American Journal. Hans Von Hentig took a similar approach in his article, in which he wrote, "Possession of money has certainly to do with robbery and prettiness or youth are contributing factors in criminal assaults...if there are born criminals, it is evident that there are born victims, self harming and self destroying through the medium of a pliable outsider."⁶

After Seven years, Hentig famous book, *The Criminal and his Victim*, was published in which he gave the concept of duet frame of crime i.e. the criminal and his victim was given. According to Von Hentig, the relationship between the offender and his victim is much more intricate than the rough distinctions of criminal law. As soon as they draw near to one another, male or female, young or old, rich or poor, ugly or attractive – a wide range of interactions, repulsions as well as attractions, is set in motion. What the law does is to watch the one who acts and the one who is acted upon. By this external criterion, subject or object, a perpetrator and a victim are distinguished. There is a close relationship between offender and victim as such play determinant role in deciding his/her fate. According to him it was the attitude of the victim that forced the offender in the commission of crime. Von Hentig gave as many as thirteen categories of victims like the young, the old, the female, immigrants, the mentally defective, the victims belonging to minorities, dull normals, the depressed, the wanton, the acquisitive, the tormentor, the fighting victim, the lonesome and heartbroken. One of the criticisms of this typology of victims is that these are not founded on the basis of any research or survey. On the other hand Mendelsohn gave the concept of penal couple and by that he means victim and his offender. He gave six types of victims and these are: Victims who are completely innocent, victims due to their ignorance, victims as guilty as the wrongdoer, victim more guilty than the offender like a victim who provoke the other to commit a crime, victims who are the most guilty example violent perpetrator who is killed by another in self defence, and imaginary victims example paranoid and hysterical persons⁷. Stephen Schafer in his work, *The Victim and His Criminal, A Study in Functional Responsibility*, in 1968 observed that victims are actually essential element of crime, so directly or indirectly, victims are actually responsible for the happening of crime that resulted in their victimisation. Schafer through his work suggested the concept of 'Victim Precipitation' that means where the victim causes, directly or indirectly, wholly or partly, their own victimization. It relates to the contributory factors relating to victimization. In a study conducted by Zvoimir P. Separovic on the murderer victim relationship, the victim precipitated one out of four homicide cases. In the same way, Horowitz and Amir found that the victim precipitated one out of five rape cases.⁸

The concept of victim precipitation is more precisely defined by Ezzat A. Fattah in the following words⁹:

(T)he term victim precipitation is applied to those criminal homicides in which the victim is a direct, positive precipitator in the crime. The role of victim is a characterized by his having been the first in the homicide drama to use physical force directed against the subsequent slayer. The victim precipitated cases are those in which the victim was the first to show and use a deadly weapon, to strike a blow in altercation – in short the first to commence the interplay of resort to physical violence.

The use of explanatory concepts such as victim-precipitated, victim-facilitated, victim-initiated and victim-invited criminality to describe the victim's role in the causative process should in no way be interpreted as an attempt on the part of the social scientist to blame the victim or to hold him responsible for the crime.

Henry Ellenberger, a prominent psychoanalyst, focused his research on the psychological relationship between the criminal and the victim. In his book, *Relations*, he states that it is important for the criminologists to focus special attention on what he refers to as victimogenesis ('Victimo genesis' refers to the cause of victimization. It simply refers to the factors relating to the origin of victimization) rather than on criminogenesis¹⁰.

Penal Victimology looks at the dynamic interplay between victim and offender. Criminal Justice System should aim to satisfy the offender's need for atonement, the victim need for retribution and their joint need for reconciliation. For the adherents of penal victimology the scope of the field is defined by the criminal law: victimology studies the victims of incidents defined as criminal by law. The research agenda of this victimological stream combines issues concerning the causation of crimes and those concerning the victim's role in the criminal proceedings.¹¹

⁶ Hari Om Gautam, *Victims of Crime and the Law*, Regal Publications, New Delhi, 2011, p. 11.

⁷ *Id.*, at p. 31.

⁸ *Id.*, at p. 18.

⁹ *Id.*, at pp. 18-20.

¹⁰ *Id.*, at pp. 23-24.

¹¹ Prakash Talwar, *Victimology*, Isha Books Publishers, New Delhi, 2006, p. 2.

Over the centuries, the word victim came to have additional meanings. During the founding of victimology in 1940s, victimologists such as Mendelsohn, Von Hentig and Wolfgang tended to use textbook or dictionary definitions of victims as hapless dupes who instigated their own victimisations.¹² The notion of victim precipitation was vigorously attacked by feminists in 1980s, and was replaced by the notion of victims as anyone caught up in an asymmetric relationship or situation. Asymmetry means anything unbalanced, exploitative, parasitical, oppressive, destructive, alienating or having inherent suffering. In this view, victimology is all about power differentials. Today, the concept of victim includes any person who experiences injury, loss, or hardship due to any cause¹³.

2.3 Victims of Cheque dishonors

In CHEQUE dishonor cases, victims have specific rights to seek redress and compensation for financial loss or damage under the legal framework. Victims' rights generally include:

Right to Compensation:

Victims of CHEQUE dishonor have the right to seek compensation for the amount mentioned in the dishonored Cheque.

Compensation may include the principal amount mentioned in the Cheque, along with accrued interest and reasonable legal costs incurred in pursuing the case.

Right to legal recourse:

Victims have the right to initiate legal proceedings against the issuer of the dishonored Cheque.

Legal recourse often includes filing a criminal complaint under relevant sections of the Negotiable Instruments Act or other applicable laws in the jurisdiction.

Right to protection from harassment:

Victims are entitled to protection from harassment by dishonored CHEQUE issuers during legal proceedings.

Legal mechanisms are in place to prevent the accused from engaging in bullying or harassment of the victim.

Right to Information:

Victims have the right to be informed about the progress of legal proceedings related to dishonored Cheques.

They are entitled to updates on court hearings, developments in the case and any orders issued by the court.

Right to Recovery:

Once the court order is obtained in favor of the victim, they have the right to take necessary steps to recover the due amount.

The court may issue orders for attachment of the property or other assets of the drawer to meet the compensation amount.

Right to fair hearing:

Victims have the right to a fair trial during legal proceedings.

The legal process should provide the victim an opportunity to present evidence and arguments in support of his or her case.

Right to Appeal:

If dissatisfied with a court decision, victims generally have the right to appeal to higher courts.

The appellate process allows for review of the case and the possibility of a different legal outcome.

It is important to note that the specific rights of victims in CHEQUE dishonor cases may vary depending on the jurisdiction and applicable legal provisions. Individuals facing such situations should consult legal professionals to understand their rights and the appropriate legal steps to take in their specific circumstances.

2.4 Legal rights in CHEQUE bounce case

A CHEQUE is a negotiable instrument which can be issued to a bank and requested to pay a specified amount, stated both in figures and words, to the person concerned, whose name is presented on the Cheque. CHEQUES are widely used in many transactions, including but not limited to repayment of loans, salaries, etc. A CHEQUE is payable on demand only when it is drawn on a specific bank.

Ideally, when a CHEQUE is presented in the bank, it is encashed and the amount is credited to the account of the designated person. But in certain circumstances, when the CHEQUE is returned unpaid, it is called dishonored or bounced. This can happen due to many reasons like lack of funds, mismatch of signatures etc. When a CHEQUE bounces, the bank issues a 'Cheque return memo' mentioning the reasons for non-payment.

The person who writes the CHEQUE is known as the 'drawer' and the person in whose favor the CHEQUE is written is called the 'drawee'. CHEQUES are mostly preferred because of their security compared to other forms of money transfer such as NEFT (National Electronics Fund Transfer). For example, crossed CHEQUES cannot be encashed by anyone other than the payee and will be credited only to the payee's account.

¹² *Ibid.*

¹³ *Id.*, at p. 19.

Dishonor of Cheque:

A CHEQUE is said to be dishonored or bounced when a bank refuses to encash it due to various reasons like – insufficient balance in the account, overwriting, expiry of validity of the Cheque, etc. CHEQUE bounce cases happen in every corner of the country and it is no surprise when statistics show that there are around 40 lakh cases pending before the courts.

CHEQUE bounce happens due to various reasons as mentioned below:

Expiry: A CHEQUE becomes void if presented after 3 months from the date of issue

Incorrect Account Number: Entering the wrong account number renders the CHEQUE invalid.

Contradiction of amount mentioned in words and figures: When the amount mentioned in figures is different from the amount mentioned in words then the CHEQUE will be dishonored.

Discrepancy in signature: When the signature in the CHEQUE does not match the signature of the account holder in the official documents then the CHEQUE is dishonored.

Overwriting or illegible writing: In a Cheque, when details like account number, name or amount are overwritten, the CHEQUE becomes dishonored.

Bank account ceases to exist: When the account is closed by the account holder or the bank, the CHEQUE is returned.

Insanity or Bankruptcy: When the drawer of the CHEQUE demonstrates insanity or becomes insolvent, the CHEQUE is dishonored.

Exceeding overdraft limit: When the overdraft amount, which is the maximum withdrawal limit, is exceeded, it will result in dishonor of the Cheque.

Payment Stopped: If the account holder stops payment, it will result in dishonor of the Cheque.

Insufficiency of opening balance and insufficiency of funds: A CHEQUE will bounce when the opening balance of the account issuer is less than the prescribed amount or when the funds in the account are not sufficient to pay the Cheque.

Legal Procedures Related to CHEQUE Bounce Cases:

If a CHEQUE bounces due to technical reasons or there are insufficient funds, the bank charges a fee from both the drawer and the drawee. Section 138 of the Negotiable Instruments Act, 1881 deals with CHEQUE bounce cases.

It also lists possible actions to be taken if a CHEQUE bounces, as explained below:

Re-submission of CHEQUE for observation:

When a CHEQUE bounces and once the CHEQUE issuer has had the opportunity to correct the errors in the CHEQUE issued, the person can re-submit the CHEQUE for clearance. This should be done within 3 months from the date of CHEQUE bounce. The bank informs the payee about the dishonor of the CHEQUE by issuing a 'Cheque return memo', stating the reason for non-payment of the money mentioned in the Cheque. To make a valid claim, the potential payee must deposit the CHEQUE in the bank within three months from the date of issue, otherwise the CHEQUE will lapse.

Issuance of demand notice:

If the CHEQUE is dishonored for the second consecutive time, the payee of the CHEQUE can submit a demand notice to the issuer. The demand notice usually directs the CHEQUE issuer to compensate the required amount of money within 15 days of such notice. This demand notice should be issued within a time period of 30 days from the date of CHEQUE bounce. The court does not condone any delay in issuing the notice unless there is a justifiable reason for such delay.

Register a complaint:

If the CHEQUE issuer fails to respond to the demand notice, the recipient of the bounced CHEQUE can formally file a complaint within 30 days from the date of expiry of the demand notice. A case can be registered even after this time period, provided there are good reasons for such delay. But, the normal time limit to resolve CHEQUE bounce cases is 30 days.

The jurisdiction of the courts, where such complaints can be raised, depends on the place where the CHEQUE was cut, presented, or returned by the bank. Although Section 138 of the Negotiable Instruments Act, 1881 may be invoked in these circumstances, CHEQUES issued as gifts will not fall within this scope.

When a complaint related to a CHEQUE bounce case is filed, the First Class Judicial Magistrate should verify whether the prescribed court fee has been deposited or not, and mandatory documents like copy of the notice, original CHEQUE and acknowledgment receipt have been submitted. Or not equipped. It is also necessary that the complainant is physically present before the court for examination by the Magistrate. Thereafter, a summons to the CHEQUE issuer will be sent by the Magistrate, asking the person concerned to appear before the court. If the issuer is so found guilty, the person shall be punished with fine or imprisonment under Section 138 of the Negotiable

Instruments Act. The recipient of a bounced CHEQUE is also entitled to seek protection under Section 420 of the Indian Penal Code, 1860, as this act amounts to fraud.

Filing a Civil Complaint:

A CHEQUE bounce case is usually considered a criminal case, in which the issuer of the CHEQUE is punished with imprisonment or fine. But many times, the victim who receives a bounced CHEQUE is not compensated the stipulated due amount. Therefore, it is advisable that the victim also files a separate civil suit to recover his/her share of the amount. This can be accomplished by filing a summary suit under Order 37 of the Code of Civil Procedure, 1908. It is quite different from a normal civil suit as it does not give the defendant the right to defend himself. To achieve this, the defendant must obtain prior permission from the court.

Apart from imposing appropriate punishment on the defaulter by imposing imprisonment or fine, the bank should also take steps to warn the defaulter by blocking access to banking facilities. It is also wise on the part of the bank if it insists that the individual's specific account be terminated. Recently, it has also been proposed to mandatorily suspend bank withdrawals for a few days after a CHEQUE bounces so as to make defaulters accountable for their actions. It has also been suggested that CHEQUE bounce cases be settled through arbitration within 90 days.

Getting involved in a CHEQUE bounce case can be difficult and painful. This pain is best dealt with when it is outsourced to a legal professional. Our legal team at VakilSearch can be contacted when you face CHEQUE bounce issues. Our team will ensure that the matter is handled carefully and you get the issues resolved as soon as possible.

2.5 Director's liability and challenges faced by victims in CHEQUE dishonor cases in India

In India, the use of CHEQUES as a common method of payment has been prevalent for several decades. However, the increasing number of cases involving CHEQUE dishonor has become a growing concern for the banking sector and the Indian legal system.¹⁴ When a CHEQUE bounces or bounces, it not only leads to financial loss But it also raises the question of legal liability for the individuals involved. In this context, the subject of directors' liability in case of CHEQUE dishonor has attracted significant attention, especially in the corporate world, where CHEQUES are used for various transactions such as salary payments, vendor payments and other business transactions. In India, dishonor of a CHEQUE is considered a criminal offense which can have serious legal consequences. The provisions relating to dishonor of CHEQUES are contained in the Negotiable Instruments Act of 1881. Sections 138-142 of the Negotiable Instruments Act of 1881 aim to enhance the effectiveness of banking operations and ensure the integrity of business transactions conducted through Cheques.¹⁵ Section 138 imposes criminal liability punishable with imprisonment, fine or both who issues a CHEQUE in satisfaction of any debt or obligation in whole or in part and the bank refuses to honor the CHEQUE on presentation.¹⁶ If a corporation dishonors a Cheque, vicarious liability will be imposed on three groups of people: the company itself, any person who was in charge of the company's activities, and other persons including directors, managers, secretaries and Executives from other firms are involved. , This article provides an analysis of the liabilities that directors in India face in case of non-honor of Cheques.

Liability of directors in case of dishonor of Cheque

Generally, the person responsible for CHEQUE dishonor is the person who issued the CHEQUE. However, under certain circumstances, company directors may also be held liable for dishonor of CHEQUES issued by the company. Directors can be held liable for dishonor of CHEQUES if they were involved in the day-to-day operations of the firm and had influence over its financial management. The following terms can be used to demonstrate accountability of directors for dishonored Cheques:

- a) Director as signatory: If a director of a company signs a CHEQUE for the company and the CHEQUE bounces because the company does not have enough money, the director can be held liable. This is because, as the person signing the Cheque, the director is responsible for ensuring that the company has enough money to pay the Cheque. Under Section 138 of the Negotiable Instruments Act, the director can be held liable in this situation.
- b) Director in charge of finance: If the director of a company is in charge of the finance department and has control over the company's finances, and the company's CHEQUE is returned, the director can be held liable. This is because the director in charge of the company's finances is in charge of making sure the company has enough money to pay the Cheque. Section 138 of the Negotiable Instruments Act says that the director can be prosecuted.
- c) Director as guarantor: In some cases, a company director may be a guarantor for the loan taken by the company. If the loan is not paid, the guarantor is asked to pay the amount, and the guarantor's CHEQUE bounces, Section 138 of the Negotiable Instruments Act says that the director can be held responsible.

¹⁴ Law Commission of India, 213th Report, Fast Track Magisterial Courts for Dishonoured Cheque Cases, November 2008.

¹⁵ Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249.

¹⁶ SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89.

d) Director with knowledge of dishonor: If a director of a company knows that a CHEQUE drawn by the company has not been cashed and he does nothing to correct the problem, the director can be held liable. This is because, if the director is aware of the insult, he or she must take steps to remedy the situation. Section 138 of the Negotiable Instruments Act says that the director can be prosecuted.

Dishonoured Cheque Case

In common parlance, a CHEQUE is a financial instrument written by its owner ordering his bank to pay a certain amount from his account to another person. The Oxford Dictionary defines the word CHEQUE as a written order to a bank to pay a certain amount of money from an account to a specified person. In the legal field, according to Black's Law Dictionary, a CHEQUE is a draft signed by the maker or drawer, drawn on a bank, payable on demand, and unlimited in negotiation¹⁷.

As far as India is concerned, the law governing CHEQUE transactions is the Negotiable Instruments Act, 1881. In the eyes of Indian law, a CHEQUE is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. And it includes the electronic image of the CHEQUE drawn and the CHEQUE in electronic form¹⁸. Despite the advent of electronic transfers, CHEQUE transactions have not lost their popularity. It has become not only common but also mandatory in most commercial transactions.

In *Goa Plast (Pvt) Ltd vs Chico Ursula D'Souza*, the apex court said:-

Chapter XVII containing Sections 138 to 142 was introduced into the Act by Act 66 of 1988 with the objective of instilling confidence in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. The purpose of these provisions was to discourage people from not honoring their commitments through payment through Cheques.¹⁹

Section 138 is considered to be the savior of the victims because in the absence of Section 138 the victims of dishonored CHEQUE cases would only have the option to file a suit for recovery of money under the Code of Civil Procedure, 1908²⁰ and payment of victim stamp duty. and shall be subject to sluggish civil processes but this section imposes punishment in the nature of both imprisonment and fine. The maximum punishment punishable under this section is imprisonment of two years, or fine which may extend to twice the amount of the Cheque, or both. Therefore, the intention of the law makers behind bringing in this section is to reduce the number of frauds taking place in CHEQUE transactions, punish the fraudsters and provide speedy justice.

Section 138 reads as follows:

Dishonor of CHEQUE due to lack of funds in the account etc. -Where a CHEQUE is drawn by a person to pay any sum from that account to another person in full or part payment of any debt or other liability on an account maintained with a banker. Where the CHEQUE is returned unpaid by the bank, either where the funds in the account are insufficient to pay the CHEQUE or it exceeds the amount payable from that account by the agreement made with that bank, such person shall will be. shall be deemed to have committed the offense and, without prejudice to any other provision of this Act, shall be punished with imprisonment for a term which may extend to two years], or with fine which may extend to twice the amount of the Cheque . . , or with both: Provided that nothing contained in this section shall apply unless— (a) the CHEQUE is tendered to the bank within a period of six months from the date of its being drawn or within the period of its validity, Whatever may have been presented is first;

b) The payee or holder of the Cheque, as the case may be, gives a notice in writing to the drawer of the CHEQUE [within thirty] demanding payment of the said sum. on the day he receives intimation from the Bank regarding return of the unpaid Cheque; And

(c) the drawee of such Cheque, fails to pay the said sum to the payee or holder of the Cheque, as the case may be, within fifteen days of the receipt of the said notice, in proper order. ,

Explanation.-For the purposes of this section, debt or other obligation means a legally enforceable debt or other obligation.²¹

Presumption in CHEQUE Case The concept of presumption can be traced back first to the Indian Evidence Act. Section 4

The Act deals with three categories of presumption which are as follows:

1. Can guess
2. Will guess

¹⁷ Black's Law dictionary 8th edition (1st South Asian edition 2015)

¹⁸ See sec 6 of the Negotiable Instrument Act, 1881

¹⁹ *Goa Plast (Pvt) Ltd. vs. Chico Ursula D'Souza* (2003) 3 SCC 232

²⁰ Order 37 of the Civil Procedure Code, 1908

²¹ See <https://indiankanoon.org/doc/1823824/>

3. Conclusive evidence

The first two categories of conjecture are refutable, in contrast to the last category. Let us assume that the courts have a wide scope to accept or not accept a fact. Therefore, acceptance of any fact is entirely based on the discretion of the courts. In the matter of what will be taken for granted, the courts are bound to assume a fact unless the same fact is refuted. When it comes to conclusive evidence there is no possibility of refuting a fact, when a fact is declared by another fact to be conclusive evidence of another fact, the courts are not allowed to introduce evidence to refute it.²²

The presumption under Section 118 of the Negotiable Instruments Act relates to the consideration, date, time of acceptance, time of transfer, order of endorsement, stamp and the holder in due course. The presumption under this section is inclusive as it includes all types of negotiable instruments²³. But Section 139 of the Negotiable Instruments Act is special for CHEQUE cases. It deals with presumption in favor of the CHEQUE holder.

Section 139 of the Negotiable Instruments Act is read under the presumption in favor of the holder. - It shall be deemed, until the contrary is proved, that the holder of the CHEQUE has received for discharge a CHEQUE of the nature specified in section 138. the whole or part of any debt or other liability.²⁴

From the above provision of law, the courts under this section must assume that the CHEQUE as defined in section 138 has been received by the holder in repayment, in whole or in part, of any debt or liability. So far as the interpretation of the words debt or liability is concerned, the courts are guided by the explanatory provision contained in Section 138 of the Negotiable Instruments Act.

The explanatory part of section 138 of the Negotiable Instruments Act is as follows

Explanation.-For the purposes of this section, debt or other obligation means a legally enforceable debt or other obligation.

Therefore, the complainant cannot succeed unless the debt or other liability is legitimate i.e. the transaction should not violate any statute or provisions of law for the time being in force. The Hon'ble Supreme Court held that a complaint under Section 138 must contain the following elements, namely,

- (i) that there is a legally enforceable debt;
- (ii) the CHEQUE was drawn from the account of the bank in settlement in whole or in part of any debt or other liability which constitutes a legally enforceable debt;
- (iii) The CHEQUE so issued was returned due to lack of funds²⁵.

When it comes to rebutting the presumption contemplated in Section 139, it depends on the facts and circumstances of each case. In the light of Section 139, the action to rebut the presumption will be in the hands of the accused only. Therefore, unlike all criminal cases, in all Czech cases the responsibility initially rests on the accused. In the eyes of the common man, CHEQUE bounce cases are considered a criminal matter. But as per the view of the jurist the nature of CHEQUE bounce offense is a civil wrong with criminal provisions. Law makers have included penal provisions to maintain the reliability and efficacy of CHEQUE transactions and to ensure speedy disposal of cases. As a result, CHEQUE dishonor cases are governed by a principle called the preponderance of the probability, which is followed in all civil cases, rather than the principle beyond a reasonable doubt, which is followed in all criminal trials.

In *Kishan Rao v. Shankar Gowda*, the ratio laid down by the Apex Court was a mere rebuttal, which cannot rebut the presumption contemplated in Section 139.²⁶ The excerpt from *NSS Rajasekhar v. Augustus Jeba Ananth*²⁷ is as follows; In the absence of a compelling justification, reverse onus clauses generally impose an evidentiary burden and not a persuasive burden. With this in mind, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof to do so is 'preponderance of probabilities'. Therefore, if the accused is able to mount a potential defense that casts doubt about the existence of a legally enforceable debt or obligation, the prosecution may fail. As explained in the citations, the accused may rely on materials produced by the complainant to mount such a defense and it is possible that in some cases the accused may not be required to produce his own evidence.

In the case of *Bir Singh vs. Mukesh Kumar*²⁸, the Honorable Supreme Court said that:-

²² See sec 4 of the Indian Evidence Act, 1872

²³ See sec 118 of the Negotiable Instrument Act, 1881.

²⁴ <https://indiankanoon.org/doc/268919/>.

²⁵ *Krishna Janardhan Bhat vs Dattatraya G. Hedge*, 2008 (4) SCC 54 : 2008 (1)SCR 605.

²⁶ *Kishan Rao Vs Shankargouda* CrI.A.No. 803 of 2016

²⁷ *ANSS RAJASHEKAR VS AUGUSTUS JEBAN ANANTH CRIMINAL APPEAL NO(S).95-96 OF 2019*

²⁸ *Bir Singh vs Mukesh Kumar CRIMINAL APPEAL NOS.230-231 OF 2019(@ SLP(CRL) NOS. 9334-35 OF 2018)*

Even a blank CHEQUE leaf voluntarily signed and handed over by the accused, which is for some payment, would be deemed to be a presumption under Section 139 of the Negotiable Instruments Act, in the absence of any concrete evidence to show that the CHEQUE was issued in discharge.

Setting the law in motion

CHEQUE cases are a mixture of both the Negotiable Instruments Act and the Criminal Procedure Code. As per section 138 the CHEQUE must be within the period of its validity, based on RBI notification the period of validity has been reduced from six months to three months.²⁹ In case of CHEQUE being returned unpaid, the payee or The law is triggered by issuing a demand notice within thirty days of receipt of the notice by the holder.³⁰ If the payer fails to pay the said amount within fifteen days of the receipt of the said notice, section 142 applies³¹. According to section 142, the court of a Metropolitan Magistrate or a Judicial Magistrate shall take cognizance of the offense described in section 138 only after a complaint in writing has been made within a reasonable time by the payee or holder of the Cheque.³² Provided that, No court inferior to the SC has the jurisdiction to take cognizance of an offence³³. The court can also condone the delay in filing the complaint. In fact, the intention of the framers of clause (b) of Section 142 is to give opportunity to the complainant in any unpleasant situation.³⁴

In *Sadanandan Bhadrans v. Madhavan Sunil Kumar*³⁵, the Apex Court held that failure of the drawer to pay the money within the period of 15 days envisaged under clause @ of the proviso to Section 138 results in liability of the drawer. He is prosecuted for the offense committed by him, and the period of one month for filing the complaint under Section 142 will be reckoned accordingly.

Suing point

Of. In *Bhaskaran v. Shankaran Vaidyan Balan*³⁶, in which it was held that the offense under Section 138 of the Act can be accomplished only with a combination of several acts. The following acts are ingredients of the said offence:

- (1) Drawing of Cheque,
- (2) Presenting the CHEQUE to the bank,
- (3) Return of an unpaid CHEQUE by the drawee bank,
- (4) Giving notice in writing to the drawer of the CHEQUE demanding payment of the CHEQUE amount,
- (5) Failure of the payer to make payment within 15 days of receipt of the notice, if five separate acts were made in five different localities, in the courts exercising jurisdiction in any one of the five localities Any place can be made from it. Prosecution for offense under section 138 of the Act.

It was in *Dashrath Roopsingh Rathod v. State of Maharashtra*³⁷ that a three-judge bench of the Supreme Court rejected the ratio decidendi and held that the place of trial is determined by the place where the offense was committed as per section 177 of the Criminal Code . Process code. Thus, the complainant is statutorily bound to comply with Section 177 of CrPC etc. And therefore the place of trial where the Section 138 complaint is to be filed is not of his choice.

The above decision remained in effect till the birth of the Negotiable Instruments (Amendment) Act, 2015. The issue of venue of suit has been resolved after the inclusion of sub-section (2) of Section 142 in the Negotiable Instruments Act.

According to sub-section (2) of section 142³⁸:

An offense under section 138 shall be inquired into and tried only by a court within whose local jurisdiction, -

- (a) if the CHEQUE is delivered for collection through an account, the branch of the bank where the payee or the holder, as the case may be, maintains the account, is situated; Or
- b) If the CHEQUE is presented by the payee or bearer for payment at the proper time, otherwise through an account, the branch of the drawee bank is situated where the drawee maintains the account.

Proceedings in Dishonored CHEQUE Case Preliminary Proceedings Section 143 empowers Judicial Magistrates of the first class or Metropolitan Magistrates to hear cases summarily in accordance with the provisions of Sections 262

²⁹ RBI/2011-12/251 DBOD.AML BC.No.47/14.01.001/2011-12

³⁰ See sec 138(b) of the Negotiable Instrument Act, 1881

³¹ See sec 138 (c) of the Negotiable Instrument Act, 1881

³² See sec 142(a) of the Negotiable Instrument Act, 1881

³³ See sec 142(c) of the Negotiable Instrument Act, 1881

³⁴ K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510

³⁵ See sec 142(b) of the Negotiable Instrument Act, 1881

³⁶ *Sadanandan Bhadrans vs Madhavan Sunil Kumar*, AIR 1998 SC 3043

³⁷ *Dashrath Rupsingh Rathod vs. State of Maharashtra* (2014) 9 SCC

³⁸ Ibid

to 265 of the Code of Criminal Procedure and to pass orders to the Magistrates under this section. Have the right. Punishable with imprisonment for a term not exceeding one year and a fine not exceeding five thousand rupees³⁹. If the Magistrate is apprehensive that a sentence of imprisonment for a term exceeding one year may be awarded or for any other reason undesirable to the case, the Magistrate shall, after hearing or re-hearing the parties and witnesses, consider the reasons Will record it in writing and proceed further. Methods prescribed in the Code⁴⁰. For the mode of service the Magistrate may direct a copy of the summons to be sent through speed post or courier service approved by the Sessions Court to the place where the accused or the witness ordinarily resides or carries on business or to the individual for profit⁴¹. In case of refusal to receive, the court issuing the summons may declare that the summons has been duly served.⁴²

Cognizance without physical presence The essence of physical presence has been diluted by Section 145, this was done to provide speedy justice. Section 145 deals with receiving evidence on affidavit. To take cognizance, it is not mandatory for the complainant to personally come and lodge the complaint. If the court is satisfied on the application of the prosecution or the accused, it may issue summons and examine any person adding evidence on affidavit.⁴³

In *Indian Bank Association v. Union of India*⁴⁴ the Supreme Court held that the court has the option of accepting the affidavits of the complainant and other witnesses for the main investigation instead of examining them in the court – however, the witnesses have to be heard in the complaint and the accused. Should be available for cross-examination whenever a direction to this effect is given by the court.

In the case of *Ariplavan Finance v. State of Kerala and Others*⁴⁵, Justice B. Sudheendra Kumar observed that "The purpose of enactment of Section 145 of the NI Act and the ratio laid down by the Apex Court make it amply clear that personal appearance is essential for taking cognizance of the offence. Consent of the complainant is not necessary.

"Therefore, courts dealing with cases under Section 138 of the NI Act will not insist for personal presence of the complainant at the pre-cognizance stage if the complaint is accompanied by an affidavit and documents of the complainant." If any, are found in sequence. In this situation, the trial court's dismissal of the complaints before taking cognizance on the ground that the complainant was not personally present before the court cannot be justified."

From the above it can be concluded that the courts have the option to take cognizance of the offense without the personal presence of the complainant in case of complaint accompanied by an affidavit.

Mischiefous defense In most Czech cases there are two defenses raised by the accused; 1. Instructions for lost and stopped CHEQUE 2. Source of funds

The Hon'ble Supreme Court has eliminated CHEQUE stoppage, a dangerous loophole, by applying the rule of interpretation in Section 138 of the Negotiable Instruments Act cases. The court condemned the literal interpretation of the section and interpreted the provision to be in line with the objective of the Act and to maintain the reliability and acceptability of post-dated CHEQUE transactions.

In *Goa Plast (Pvt) Ltd. v. Chico Ursula D'Souza*, the apex court said that the court should lean in favor of the interpretation that serves the purpose of the statute. If payment of a post-dated CHEQUE can be stopped regularly it will lose its credibility and acceptability. The same position was reiterated in *Rangappa vs. Shri Mohan*⁴⁶.

The Supreme Court believes that protecting evidence of money after the estimate is dirty. *Rohitbhai Jeevanlal Patel Vs. State of Gujarat and Others*, the court held that it is needless to reiterate that the consequence of such a presumption is that the existence of a legally enforceable debt has to be construed in favor of the complainant. When such presumption is made, factors relating to lack of documentary evidence in the form of receipts or accounts or lack of evidence as to the source of funds were not given relevant consideration while examining whether the accused rebuts the presumption is capable of doing so or not"⁴⁷. Latest Amendments to the Negotiable Instruments Act.

³⁹ <https://www.prsindia.org/sites/default/files/Negotiable%20Instruments%20Act%2C%202015.pdf>

⁴⁰ See sec 145(2) of the Negotiable Instrument Act, 1881

⁴¹ See sec 143 (1) of the Negotiable Instrument Act, 1881

⁴² Ibid

⁴³ See sec 144 (1) of the Negotiable Instrument Act, 1881

⁴⁴ See sec 144 (2) of the Negotiable Instrument Act, 1881

⁴⁵ *Areplavan Finance vs. State of kerala & Ors* CrI.MC.No. 171 of 2019

⁴⁶ <https://indiankanoon.org/doc/150051/>

⁴⁷ <https://www.livelaw.in/top-stories/-presumption-under-sec139-143621>

The 2018 amendment bill faced mixed reviews, with some saying it was a bill for money laundering but the majority said the bill would reduce unnecessary litigation. But as Dr. Shashi Tarur has noted, the Bill fails to provide space for a mark of absence⁴⁸. The main focus of the bill was interim compensation. Section 143A and Section 148 have been added by virtue of the Negotiable Instruments Amendment Act, 2018⁴⁹.

This amendment relates to a concept called interim compensation. Pursuant to section 143, if the accused pleads not guilty the court may order him to pay interim compensation not exceeding twenty percent of the CHEQUE amount. The accused will have to pay compensation within sixty days from the date of the order which may be extended by thirty days if the court is satisfied with the reasons. When interim compensation remains unpaid, it can be recovered as fine under Section 421 of the Code of Criminal Procedure, 1973.

Section 421 of the Code of Criminal Procedure, 1973 thus warrants the imposition of fine.

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, he may—

(a) issue a warrant for the recovery of the amount by attachment and sale of any movable property of the offender; (b) issue a warrant to the Collector of the district authorizing him to recover a sum as arrear of land revenue from the movable or immovable property or both of the defaulter: Provided that, if the sentence so directs That in case of default in payment as to the fine, the offender shall be imprisoned, and if such offender has, in default, served the entire sentence of imprisonment, no court shall issue such warrant unless recorded in writing Unless, for special reasons to be made, he considers it necessary so to do, or unless he has ordered payment of expenses or compensation out of the fine under section 357.

2) The State Government may make rules regulating the manner in which a warrant under clause (a) of sub-section (1) is to be executed, and the summary of any claim made by any person other than the offender Any property attached in execution of such warrant for assessment.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall recover the amount in accordance with any law relating to the recovery of arrears of land revenue, as if such warrant had been issued under such law. A certificate issued under: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.⁵⁰

In case of acquittal, the complainant is liable to pay interim compensation along with interest by the sixtieth day from the date of such order, which may be extended by thirty days after showing sufficient cause. Section 148 deals with payment of interim compensation at the appeal stage, in an appeal by the appellant against the 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. The judgment was pronounced by the trial court and it follows the same proposition laid down in section 145A⁵¹.

Compounding provision

According to Section 147, all offenses punishable under this Act can be compounded. This section plays a major role in reducing the pendency ratio.

INJ&K Industries Ltd. vs. Amarlal Vs. Juman⁵², the Apex Court observed that in view of the non-volatile clause in Section 147 of the Act, the requirement of consent of the person making the compromise in Section 320 CrPC is necessary even in the case of compromise of offense under negotiable. Equipment Act. But the decision could not last long.

The court of M/s rejected the decision. Meters and Instruments Pvt. Ltd. and Others v. Kanchan Mehta, it was held that although compounding requires the consent of both the parties, even in the absence of such consent, the Court, on being satisfied that in the interest of justice, that the complainant is given appropriate compensation, may do so at his discretion. Stop the proceedings and acquit the accused. Hence, from M/s. Meters and Instruments Pvt. Ltd. and Others vs Kanchan Mehta judgment it can be inferred that in the interest of justice the courts have full power to close the case without anyone's consent if they find that appropriate compensation has been paid to the complainant .

Case analysis

⁴⁸ <https://timesofindia.indiatimes.com/india/lok-sabha-approves-bill-to-cut-litigation-over-bounced-cheques/articleshow/65111358.cms>

⁴⁹ <http://egazette.nic.in/WriteReadData/2018/188048.pdf>

⁵⁰ <https://indiankanoon.org/doc/89440/>

⁵¹ See sec 148 of the Negotiable Instrument Act, 1881

⁵² J&K Industries Ltd vs. Amarlal V. Juman (2012) 3 SCC 255

- a) *R. Kalyani v. Janak C. Mehta and others* (2009)⁵³: In this case, the Supreme Court ruled that a director can be held liable under Section 141 of the Negotiable Instruments Act for the offense of CHEQUE dishonor committed by the company. Act, 1881, if he was in charge of the affairs of the company and was responsible for the conduct of its business at the time of the offence. According to the court, liability arises from the director's active participation in the firm and knowledge of the transaction.
- b) *Sunil Bharti Mittal vs. CBI and Ors.* (2015)⁵⁴: In this judgment, the Supreme Court pointed out that Section 141 of the Negotiable Instruments Act, 1881 requires the director to be in charge and accountable for the operations of the company, but this does not mean that he is the sole director of the company. There should be day-to-day control over matters. The court ruled that a director who is involved in the decision-making process of the company can be held accountable under this section.
- c) *Standard Chartered Bank vs. State of Maharashtra and Ors.* (2016)⁵⁵: In this case, the Supreme Court ruled that the burden of proving the culpability of a director is on the complainant under Section 141 of the Negotiable Instruments Act of 1881. The court also held that being a director of a corporation does not automatically make the person liable for CHEQUE dishonor violations committed by the firm.
- d) *Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd.* (2000)⁵⁶: The Supreme Court ruled in this case that a director of a company can be held liable for dishonor of a CHEQUE issued by the company if he has control of and is responsible for the conduct of the business of the company at the time of issue of the Cheque.
- e) *Standard Chartered Bank v Andhra Bank Financial Services Limited* (2006)⁵⁷: In this case, the Supreme Court ruled that the principle of "competitive responsibility" applies to the directors of the company in the event of CHEQUE dishonor, and the directors Delinquency arises when the firm is unable to pay the CHEQUE amount due to insufficient cash.
- f) *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* (2005)⁵⁸: In this case, the Supreme Court ruled that a director can be held liable for dishonor of a Cheque, even if he is unaware of insufficient funds in the company's account. yes. At the time the CHEQUE was issued, provided it can be proved that he signed the CHEQUE in his capacity as a director of the business.
- g) *National Small Industries Corporation Limited v. Harmeet Singh Paintal* (2010)⁵⁹: In this case, the Supreme Court ruled that a director can be held liable for dishonor of a CHEQUE only if it can be proved that he dishonored the Cheque. Necessary knowledge and intention to issue, and he was in charge and responsible for, the business operations of the company at the time the CHEQUE was issued.
- h) *Dashrath Roopsingh Rathod v. State of Maharashtra* (2014)⁶⁰: In this judgment, the Supreme Court determined that a director of a corporation can be held liable for dishonor of a CHEQUE only if he has played a direct role in it. The transaction which resulted in the issue of CHEQUE and he had the requisite knowledge and intention to issue the Cheque.
- i) *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* (2019)⁶¹: In this case, the Supreme Court confirmed its previous judgment that a director can be held liable for dishonor of a Cheque, even if he is unaware of the insufficiency of funds. The account of the company at the time of issue of the Cheque, if it can be proved that he signed the CHEQUE as a director of the company.
- j) *Nandakumar vs. State of Kerala* (2021): In this case, the Supreme Court ruled that a director of a company can be held liable for dishonor of a Cheque, even if he resigned from his post before issuing the Cheque. Ho, if it can be proved that he was a director of the company at the time of the transaction by which the CHEQUE was issued.

Available to rescue director

There are certain defenses available to the director in case of dishonor of Cheque. These defenses are:

- a) **Lack of knowledge:-** One of the primary defenses available to directors is the defense of lack of knowledge. If a director can demonstrate that they did not know about the dishonor of the Cheque, they may be able to avoid

⁵³ *R. Kalyani v. Janak C. Mehta*, (2009) 1 SCC 516.

⁵⁴ *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609.

⁵⁵ *Standard Chartered Bank v. State of Maharashtra*, (2016) 6 SCC 62.

⁵⁶ *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*, (2000) 2 SCC 745.

⁵⁷ *Standard Chartered Bank v. Andhra Bank Financial Services Ltd.*, (2006) 6 SCC 94.

⁵⁸ *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89.

⁵⁹ *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330.

⁶⁰ *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129.

⁶¹ *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2019) 12 SCC 18.

liability. This defense is particularly relevant in cases where the director was not involved in the daily operations of the company and had no knowledge of the company's financial position.

b) Absence of intention to defraud or defraud:- Under Section 138 of the Negotiable Instruments Act, the payee has to demonstrate that the CHEQUE was bounced with the intention to defraud or defraud them. If a director can demonstrate that they had no intention to defraud or defraud the payee, they may be able to avoid liability. This defense is particularly relevant in cases where the dishonor of the CHEQUE was caused by some genuine error or omission.

c) Dispute over the underlying transaction:- Another defense available to directors is the dispute over the underlying transaction. If a director can demonstrate that there is a genuine dispute over the underlying transaction, they may be able to avoid liability. This defense is particularly relevant in cases where there is disagreement over the goods or services provided, or where there is a dispute over the terms of the contract.

d) Unauthorized Signatures:- If a director can demonstrate that their signature was forged or unauthorized, they may be able to avoid liability. This defense is particularly relevant in cases where the director did not sign the CHEQUE or was not authorized to sign the Cheque.

e) Insufficient funds due to circumstances beyond the control of the director:- If a director can demonstrate that the dishonor of the CHEQUE was due to circumstances beyond their control, they may be able to avoid liability. This defense is particularly relevant in cases where the company faced unexpected financial difficulties, or where the dishonor of the CHEQUE was due to bank error.

It is important to note that the availability and success of these defenses will depend on the specific facts and circumstances of each case. Directors are always advised to seek legal advice in case of dishonor of a CHEQUE to understand their legal options and possible defences.

Challenges faced by victims

Victims pursuing legal remedies against directors in CHEQUE dishonor cases in India may face several challenges. Some of these challenges are:

a) Difficulty in identifying the directors: In some cases, it may be difficult for the victim to identify the directors who are responsible for the dishonor of the Cheque. This is particularly true in cases where the company has a large number of directors or where the directors have resigned or left the company.

b) Insufficient funds: Even if the victim is able to identify the directors responsible for the dishonor of the Cheque, they may not be able to recover the amount due if the company does not have sufficient funds to pay the amount. .

c) Delay in legal proceedings: Legal proceedings in India can take time, and victims may have to wait for a long time to get a decision.

d) Lack of legal awareness: Many victims are not aware of their legal rights and do not have access to legal advice, which may make it difficult for them to seek legal remedies.

e) Cost of Litigation: Legal proceedings can be expensive, and victims may not have the financial resources to hire a lawyer and pay court fees.

f) Challenges in enforcing judgments: Even if a victim is successful in obtaining a judgment against the directors, it may be challenging to enforce the judgment and recover the amount due.

Overall, pursuing legal remedies against directors in CHEQUE dishonor cases in India can be a complex and challenging process, and victims may need to overcome many hurdles to achieve justice.

Conclusion

It is very pathetic to hear that apart from all these developments, large scale CHEQUE bounce cases are still unresolved. The Law Commission in its report suggested the formation of fast track magistrate courts to solve the pending problem of dishonored CHEQUE cases.⁶² The report said that more than 38 lakh cases are unresolved in the courts of India. According to a Times Now report, Law and Justice Minister Ravi Shankar Prasad said that the government is working to bring in a fast track court mechanism for dishonored CHEQUE cases.⁶³ However, the state has amended the 2018 amendment.⁶⁴ But no steps have been taken to establish fast track courts. Hopefully this will be in the next revision. The Honorable Supreme Court has provided several guidelines to ensure speedy trial of cases by virtue of its law making power given in the Constitution, now it is left to the legislators to further amend the Act in the times to come. Bring it to life.

⁶² <http://lawcommissionofindia.nic.in/reports/report213.pdf>

⁶³ <https://timesofindia.indiatimes.com/india/interim-grant-for-payees-of-bounced-cheques-soon/articleshow/62091126.cms>

⁶⁴ <http://egazette.nic.in/WriteReadData/2018/188048.pdf>

In summary, director's liability in case of CHEQUE dishonor is a serious issue in India, with significant legal and financial consequences for all parties involved. The provisions under the Negotiable Instruments Act, 1881, impose strict liability on directors of companies for CHEQUE bounce cases. Recent amendments to the Act have made it more challenging for directors to avoid their liability in such cases, and the courts have taken a stricter stance in dealing with CHEQUE dishonor cases. It is important for directors to be aware of their obligations under the law and take necessary precautions to prevent such incidents. Additionally, there is a need for greater awareness and education about the legal implications of CHEQUE dishonor, especially for small business owners and entrepreneurs. Overall, the issue of director's liability in case of CHEQUE dishonor requires continued attention and review by all stakeholders to ensure that the law is fair, reasonable and serves the interests of all parties involved.

Recommendations to improve the legal framework and its implementation to ensure that directors in CHEQUE dishonor cases are held accountable and victims have access to appropriate legal remedies in India:

One. Strengthen the legal framework: The legal framework should be strengthened to ensure that directors are held accountable in CHEQUE dishonor cases. This could be done by amending relevant laws to provide greater clarity on the responsibilities of directors and the consequences of their actions.

B. Increase legal awareness: There should be efforts to increase legal awareness among the general public, especially the victims of CHEQUE dishonor. This can be done by providing information and education on legal rights and procedures, as well as making legal aid and assistance more accessible.

C. Improving access to justice: The government should take steps to improve access to justice for victims of CHEQUE dishonor by reducing the cost of litigation, increasing the number of courts and judges, and streamlining court processes.

D. Enhance enforcement mechanisms: Implementation of court orders and judgments should be strengthened to ensure that victims can recover outstanding amounts. This can be done by increasing the effectiveness of debt recovery mechanisms, such as attachment and sale of assets of the company or its directors.

I. Establish a regulatory framework: A regulatory framework can be established to monitor the conduct of directors and ensure that they comply with their legal obligations. This can be done by requiring companies to file regular reports on their financial position and ensuring that these reports are accurate and up to date.

F. Increase corporate responsibility: Companies should be held responsible for the actions of their directors, and there should be penalties for companies that fail to take appropriate action to prevent CHEQUE dishonor. This can be done by increasing the liability of companies and their directors and requiring companies to take steps such as implementing proper accounting and financial management systems to prevent CHEQUE dishonor.

Overall, the legal framework and its implementation should be improved to ensure that directors are held accountable in CHEQUE dishonor cases and victims have access to appropriate legal remedies. This can be achieved through a combination of legal, regulatory and enforcement measures, as well as raising legal awareness and promoting corporate responsibility.

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14. J&K Industries Ltd vs. Amarlal V. Juman (2012) 3 SCC 255