
SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881: ADDRESSING THE SURGE IN CORPORATE FRAUD CASES AND THE FUTURE OF THE ACT

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Introduction:

The Negotiable Instruments Act, 1881 is a pivotal law in India that governs the use of negotiable instruments such as cheques, promissory notes, and bills of exchange. As a specialist lawyer in cases related to this Act, I understand the growing concerns surrounding the increase in fraud cases in corporate fields, particularly under Section 138 of the Act. This Section deals with the dishonour of cheques due to insufficient funds in the drawer's account. In recent years, there has been a noticeable surge in the number of cases filed under this section. The significant number of pending cases related to Section 138 of the NI Act is indeed a matter of concern. With 3.3 million cases awaiting resolution in various courts throughout India, it forms a substantial portion of the total 23.6 million criminal cases pending, as reported by the National Crime Records Bureau. This article aims to provide a comprehensive understanding of the reasons behind this surge, the actions taken by the courts and legal system, and the future of the Act.

The Rising Tide of Fraudulent Cases:

Global Crisis such as the Covid-19 pandemic and Russia-Ukraine war have created a favourable environment for fraud, with businesses facing financial strain and disruptions. Fraudsters have exploited this vulnerability, resulting in a surge in cases involving dishonoured cheques and other negotiable instruments. Section 138 of The Negotiable Instruments Act, 1881, which addresses cheque dishonour, has seen a continuous increase in litigation as businesses grapple with the aftermath of these crises.

1. Economic Growth and Increased Commercial Activities:

India's booming economy and the rise in commercial transactions have led to a surge in the usage of negotiable instruments, particularly cheques. As more transactions occur, instances of cheque dishonour due to insufficient funds have also risen, resulting in an increase in Section 138 cases.

2. Lack of Financial Literacy:

One significant factor contributing to the upward trend in cases is the lack of financial literacy among individuals and businesses. Many people may not fully grasp the legal implications and consequences of issuing a cheque without sufficient funds. This lack of awareness often leads to unintentional violations of Section 138.

3. Delays in Banking Processes:

Banking system delays, such as clearance and settlement processes, can also contribute to the rise in Section 138 cases. Sometimes, cheques are presented for payment after the drawer's account balance has changed, leading to dishonour. These delays in banking processes can result in legal disputes under Section 138.

4. Stringent Legal Measures:

The Negotiable Instruments Act, 1881 provides a robust legal framework to safeguard the interests of payees. The act imposes strict penalties, including imprisonment and fines, on individuals who dishonour cheques. This has encouraged more people to seek legal recourse, leading to an increase in the number of cases filed.

5. Digital Transformation:

The rapid shift towards digital transactions has opened new avenues for fraudsters to exploit vulnerabilities in payment systems and manipulate negotiable instruments.

Actions Taken by the Courts and the Legal System:

Recognizing the urgency to address the surge in corporate fraud cases under Section 138 of The

Negotiable Instruments Act, 1881, the courts and legal system have implemented several measures:

1. Increased Number of Courts:

To address this alarming trend, it is imperative for the legal system to take swift and effective action. One crucial step is to expand the number of courts dedicated to handling cases under Section 138. By doing so, the burden on existing courts can be reduced, leading to faster resolution of cases and timely justice for all parties involved.

2. Fast Track Courts for Expedited Justice:

Establishing fast track courts specifically for cases under The Negotiable Instruments Act, 1881 can significantly contribute to expediting the legal process. These specialized courts can prioritize the resolution of cheque dishonour cases, ensuring swift justice and discouraging potential fraudsters. By streamlining case management and adopting technology-driven solutions, these courts can effectively handle the increasing caseload and reduce the backlog of cases.

3. Streamlining Case Management:

Efficient case management is crucial in handling cheque dishonour cases. The judiciary system can implement measures to streamline the process, such as setting strict timelines for different stages of the case, encouraging alternative dispute resolution methods, and leveraging technology for smoother case management.

4. Establish Special Investigation Team (SIT) for Swift Action:

To ensure timely justice, establish a dedicated Special Investigation Team (SIT) to promptly apprehend accused individuals. This SIT would work closely with the courts to swiftly execute the warrants and apprehend the accused individuals.

The Future of The Negotiable Instruments Act, 1881:

As the landscape of business transactions evolves, it is essential to evaluate and update legislation

to combat emerging challenges. The Negotiable Instruments Act, 1881, has been a vital tool in addressing cheque dishonour cases. However, the surge in frauds during the pandemic highlights the need for ongoing amendments and adaptations to meet the evolving nature of corporate fraud.

1. Stricter Enforcement and Deterrence:

To combat the rising number of cheque dishonour cases, there is a growing need for stricter enforcement and deterrence measures. This may involve enhanced penalties and quicker resolution of cases to ensure that the Act serves as an effective deterrent against cheque fraud.

2. Digital Transformation and E-payments:

With the ongoing digital transformation and the increasing adoption of e-payments, the landscape of financial transactions is evolving. It is crucial for the law to keep pace with these changes to address new forms of payment and prevent fraudulent activities. Amendments to the Act may be necessary to accommodate digital transactions and ensure their legal validity.

3. Promoting Financial Literacy:

To reduce the number of unintentional violations of Section 138, there should be a concerted effort to promote financial literacy among individuals and businesses. Educating people about the legal implications of issuing cheques without sufficient funds can help prevent such cases and foster responsible financial behaviour.

4. Enhancing Judicial Training:

Providing specialized training to judges and judicial officers in dealing with cheque dishonour cases can improve their understanding of the legal intricacies involved. We can lead to more informed judgments and effective handling of such cases.

Conclusion:

In conclusion, the surge in corporate fraud cases under Section 138 of The Negotiable Instruments Act, 1881 demands a proactive approach from both the legal system and the judiciary. By

increasing the number of courts, establishing fast track courts & SIT, we can ensure more robust future for Section 138 and maintain the integrity of financial transactions in India, promoting trust and confidence in the Indian legal system.