
VARIOUS LIABILITIES UNDER DISHONOUR OF CHEQUES

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Introduction

It is a very serious issue that the cheque issued by the drawer gets dishonoured. Such issues create doubt on integrity on cashless transactions. The legislature reflected the anxiety to this problem and has tried to provide an effective remedy by incorporating Chapter XVII in the Negotiable Instruments Act. This chapter makes this wrong an offence and provides punishment in case of commission of this offence. Incorporation of this chapter is an authentic example of an effort to grow a strong environment in business transactions. The concept of public welfare has been put into operation through the instrumentality of penal law in this Act. A person who issued the cheque and the bank returns the cheque without making payment on the cheque due to reasons mentioned in the Section, will be punished with the imprisonment and fine up to the limit mentioned in the Section.¹ This Act makes provisions for the situations when the cheque issued by the company gets dishonoured.² Everyone knows that a firm is a separate legal entity. Due to its manufactured nature, it lacks a physical body, a mind, and a soul. And hence, it cannot be brought before a court as part of a judicial process. Consequently, it needs a spokesman. Along with the firm, the individuals who take part in the company's actions could face liability.

To safeguard the legality of business transactions including checks, the Negotiable Instruments Act was passed in 1881. It also has measures to prevent the possible dishonor of those who keep these instruments in their possession. Over the years, there have been numerous noteworthy shifts in the procedures surrounding the issuance, bounce, and handling of checks. The usage of checks and the frequency of disputes involving bounced checks both increased in tandem with the rapid expansion of commerce and trade. The efficiency of banking operations and the legitimacy of commercial transactions employing checks are intended to be enhanced by Sections 138-142 of the Negotiable Instruments Act of 1881. A criminal offense punishable by jail, fine, or both can be committed by anybody who writes a check to pay off a debt or

¹ Section 138 of the Negotiable Instruments Act

² Section 141 of the Negotiable Instruments Act

liability in full or in part and the bank refuses to accept the check upon presentation. The purpose of establishing Section 138 was to punish dishonest check draws who, while writing a check, pretend to be abandoning their duty but do not intend to do so.

Commerce and trade that run smoothly are vital to our nation's economy. Our commercial relations are unrestricted in this age of globalization. Major changes have occurred in the ways of issuing and dishonoured checks due to the dramatic societal developments. Our economy has benefited greatly from business globalization. There was a direct correlation between the rapid expansion of trade and commerce and the rise in both the issue of cheques and the occurrence of dishonour of cheques. The court ruled in *N. Parameswaram Unni v. G. Kannan*³, that Chapter- XVII of the Negotiable Instruments Act, 1881 aims to promote the effectiveness of banks' operations and guarantee the reliability of cheque transactions. Making the guilty party pay for their actions is crucial to accomplishing this goal. Punishing the offender adequately will serve as a deterrence and make him think twice before engaging in such unethical behaviour again.

Literature Review

Income Tax Act 1961, 2018 A check that is presented to the bank in its original form and at the designated time is obligated to be cashed by the bank. The statute of limitations on the period during which a cheque may be redeemed applies. In India, this period begins six months after the cheque was issued. A cheque is deemed "stale" when its holder fails to present it at the bank for settlement within the designated time period. The bank should disregard any such check. An essential stipulation for a cashable cheque is that the proposed amount be expressly and unequivocally written. When the quantity written on a check is subject to any uncertainty, it is not deemed to be authentic. Therefore, when there is a discrepancy between the amount conveyed in words and the amount indicated in figures, the bank should clarify any uncertainty.

Sharma & Magos, 2005, "'A person shall be considered to have defaulted upon if a bank returns unpaid a cheque drawn on an account maintained by them with a banker to pay a sum of money to another individual from that account in discharge, in whole or in part, of any debt or additional liability. The return is due to insufficient funds to honour the cheque, or the cheque amount exceeds the amount agreed to be paid from that account.'" The terms "debt" and "other

³ 2017 (2) Crimes 62

liability" are defined in the antecedent section and are applicable in this one. There is an assumption that the codification of Sections 138-142 of the NIA will enhance public trust in the security and legitimacy of banking activities and transactions that involve NIs.

S.Krishnamurthi Aiyar, 2012 A "friendly loan" is a type of reciprocal financial assistance between acquaintances or peers. A friendly loan is one between individuals with whom the borrowers are already acquainted, such as colleagues, relatives, or acquaintances. As opposed to written agreements, verbal agreements are considered more legally binding, according to conventional wisdom. Despite being forged among close companions, these have nonetheless established a financial responsibility. Consequently, legal responsibility for cheque dishonour ensues if a cheque, which was issued as payment for an amicable loan, is subsequently dishonoured. One point needs to be emphasized in this instance. The complainant was dismissed because he was unable to substantiate his assertions. The case would be resolved in his favour if he could furnish substantiating evidence, such as the issuance of a check to reimburse a favourable loan. Therefore, a loan between acquaintances may be considered a legally enforceable debt. In exchange for payment, the proprietor of movable property grants the lessee permission to use the property for a specified period of time under the terms of a hire purchase agreement. Over time, he will be making payments. A renter who timely remits all payments will be granted the option to purchase products.

Objective of The Study

- To understand the concept of dishonor of cheque.
- To Understand the Legal Framework.
- To know about the various types of liabilities in dishonor of cheque.
- To know the criminal and civil liabilities in dishonor of cheque.
- To know about the vicarious liabilities in dishonor of cheque.

Research Gap

Despite extensive research on the legal ramifications of cheque dishonor, there exists a notable gap in comparative analyses across different economic contexts, the adaptability of legal

frameworks to the digitalization of financial transactions, and the psychological impact on parties involved. Furthermore, the long-term effects on individuals' and businesses' creditworthiness and financial health are insufficiently explored. Addressing these gaps, particularly how technological shifts affect the incidence and management of cheque dishonor, and understanding its broader social and psychological dimensions, are crucial for developing more effective interventions and adapting to the evolving financial landscape.

Statement of Problem

The persistent problem of dishonored cheques presents multifaceted challenges, including legal ambiguities, financial risks for institutions, operational disruptions for businesses, and financial losses for consumers. International variations in legal frameworks and emerging technological solutions further complicate the issue. Addressing these challenges requires comprehensive research to identify gaps, explore effective risk management strategies, and promote harmonization across jurisdictions for more secure and reliable cheque transactions.

Hypothesis

The paper claims that the misuse of cheques as credit instruments threatens the sustainability, legitimacy, and existence of negotiable instruments in business. This misuse highlights a systemic issue: the existing legal framework for cheque dishonour, despite being exhaustively defined and heavily guarded by technicalities at each procedural stage, fails to protect the common man. Not just check draws but also holders and holders in due course manipulate these legal protections to their advantage, compounding the issue. The study also hypothesizes that the judicial approach to compensation features and the ability for compounding violations at any level reduces the deterrent effect of cheque dishonour regulations. These harshly punishing regulations have been weakened, reducing their effectiveness in preventing cheque misuse and protecting financial and commercial negotiable instruments.

Research Questions

- What is the concept of dishonor of cheques ?
- What are liabilities of different persons?
- What are civil and criminal liabilities?

Methodology

The present research uses a doctrinal strategy to explore and analyze Indian cheque dishonor legal literature. Critical analysis of a multitude of judicial judgments on cheque dishonour is the foundation of the work. The research examines the statute's procedures and penalties, its changes, and how it has changed with the nation's socioeconomic variables. To gather data for the study, the researcher analyzed commentaries, case law digests, law journals, newspapers, law magazines, and search engines and web portals. The research evaluates, explains, and analyzes technical, protective, and deterrent ideas by reviewing legal provisions and landmark judgments on cheque dishonor.

Civil liability in cases of dishonour of cheques

If the cheque presented to the bank for encashment gets dishonoured, the holder in due course or the payee, as the case may be, has civil remedy. They may file a civil suit to recover the payment of dishonoured cheque. It is true that before insertion of Section 138 in the Negotiable Instruments Act, there was no effective law which could stop people from issuing cheques if they don't have enough money in their bank account or any strict condition to penalize them on account of such cheque being dishonoured by their bank as well as cheque having been returned unpaid. The remedy for the dishonour of the cheque was civil remedy. The language of Section 138 shows that the remedy available under section 138 is notwithstanding any other action which the complainant could have taken against the accused.

When the cheque gets dishonoured, the drawer of the cheque stands in the position of a principal debtor and the drawee or payee or holder in due course becomes creditor. So, their relation becomes like that of debtor and creditor. Consequently, the law applicable to debtor and creditor applies on them also.

In *Summit Infotech Ltd. v. M/s Kodak India Ltd.*,⁴ the court held that no doubt, the dishonour of cheque and consequently, the cheque having been returned unpaid by the bank gives the right to the payee of the issued cheque to seek remedy from the civil court for the getting of the such amount. Therefore, filing of civil suit would not come in the way of prosecution of criminal offence for dishonour of cheque by complainant.

⁴ 2010(3) RCR (Cri) 138

In *Arumugam v. K.S.Sampath Kumar*,⁵ the Madras High Court held that the civil liability for dishonour of cheque is different from the liability under penal law. Both of these remedies are co-extensive. So, filing of complaint in criminal liability does not absolve the person from his civil liability.

In *Ramasubbu v. R. Muthu Ramalakshmi Ammal*,⁶ the Supreme Court held: “a criminal case is not a substitution for civil suit. So, if the complainant is successful in getting the fruit of the decree in the civil suit, it would be helpful only as a mitigating circumstance while imposing sentence under section 138 of the Negotiable Instrument Act.”

Criminal liability in cases of dishonour of cheques

It is well established that dishonour of cheque creates civil liability. The criminal liability also arises in these cases. The criminal liability for dishonour of cheque may be discussed under two heads which are as follows:

1. Liability under Indian Penal Code, 1860
2. Liability under the Negotiable Instruments Act, 1881

Liability under the Indian Penal Code, 1860

The application of Indian Penal Code in cheque bounce cases depends on the interpretation of its relevant provisions. Criminal liability may be imposed on the drawer of cheque under Section 420, read with Section 415 of the Indian Penal Code, if it proves to be cheating.

Section 415 of Indian Penal Code provides: “Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to be cheating.

Explanation- A dishonest concealment of facts is deception within the meaning of this section.”

⁵ 2017 (2) NIJ 459

⁶ (2015) 3 RCR (Cr) 353

Further, Section 420 of Indian Penal Code provides: “Whoever cheats and thereby, dishonestly induces the deceived person to deliver any property to any person shall be punished with imprisonment, which may extend to seven years with or without fine.”

All incidents of dishonour of cheques do not result into cheating. The wrong of dishonour of cheque may come within the ambit of Section 415, if the drawer cheated the payee or the drawee or the holder in due course in the sense of Section 415 of the Indian Penal Code. In the offence of cheating, mens rea is very essential ingredient. Guilty intention at the time of issuance of cheque is the prerequisite and essential ingredient thereto. In *Ranjan Singhal v. State of Union Territory and Others*,⁷ the Punjab and Haryana High Court held that when the accused issues the cheques drawn on an account already closed, the bad intention is cleared explicitly. Thus, offences of cheating under Section 420 of Indian Penal Code and Section 138 of Negotiable Instruments Act are made out. So, the accused may be held liable for both the offences.

In the same way, in *Sazid Khan v. State of Haryana*,⁸ the court has observed: “Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code are not mutually exclusive to each other and a person can be charged with both offences simultaneously.”

Liability under Section 138 of the Negotiable Instruments Act

Chapter XVII of the Negotiable Instruments Act provide for the liability in case of dishonour of cheque. This chapter was inserted by Section 4 of the Banking, Public Financial Institutions and the Negotiable Instruments Laws (Amendment) Act, 1988. Prior to insertion of these provisions, the person who issued the cheque could not be fixed with criminal responsibility for cheating, only on the basis of cheque being dishonoured due to insufficiency of money of the drawer. This would amount to breach of contract or professional misconduct in case of business transactions. Issuance of cheque by the drawer, even with the knowledge on his part that he did not have sufficient balance in his account to pay the amount of the cheque, did not amount to criminal liability. It merely amounted to be civil wrong. The criminal liability could arise only if the mala fide intention of the drawer of the cheque might be proved. It is well

⁷ 2015 (4) RCR (Cr.) 809 (P&H)

⁸ 2018 SCC OnLine P&H 1733

known that civil suits take a very long time to resolve the matter and don't provide such effective remedy, as is required in such sensitive cases of cheques.⁹

Thus, the cheques were losing their credibility and people afraid of accepting the cheques. Consequently, the commercial transactions were endangered to be hampered. So, to curb this situation, Chapter XVII was added in the Negotiable Instruments Act. Section 138 of the Negotiable Instruments Act makes the issuer criminally liable without the requirement of mens rea, in case other prior conditions are fulfilled.

- **Mens rea is not essential factor for the commission of dishonour of cheque under Section 138 of the Negotiable Instruments Act**

The Negotiable Instruments Act declared that the dishonour of cheque due to lack of sufficient amount in the bank will be an offence. So, the dishonour of cheque under the Negotiable Instruments Act is an offence even in the absence of element of mens rea.

In *Dashrath Rupsingh Rathod v. State of Maharashtra*,¹⁰ the court has observed: "Mens rea is the essential element of every crime. The objective of Parliament was to strengthen the use of cheques, distinct from other negotiable instruments, as mercantile tender and therefore, it became essential for offence under Section 138 of Negotiable Instruments Act to be freed from the requirement of proving mens rea. This has to be achieved by deeming the commission of an offence de hors not only under Section 138, but also by virtue of the succeeding two sections. Section 139 carves out the presumption that the holder of the cheques has received it for discharge of any liability. Section 140 clarifies that it will not be available as a defence to the drawer that he had no reason to believe, when he issued the cheque, it would not be dishonoured. In the era of globalization and rapid technological developments, financial trust and commercial interest have to be restored."

- **The liability under Section 138 of the Negotiable Instruments Act is in addition to the liability under Indian Penal Code**

The relief for dishonour of cheque under Section 138 of the Negotiable Instruments Act is a special remedy. There may be a situation when the facts constitute different offences at the

⁹ Khergamvala, *The Negotiable Instruments Act, 1988*, LexisNexis Publication, 22nd Ed., 2017.

¹⁰ 2014 (9) SCC 129

same time. In such situation, the person may be liable for all those offences. In the case of dishonour of cheque under Section 138 of the Negotiable Instruments Act, liability arises the cheque issued by the drawer is given back without payment by the bank due to the reasons prescribed in the Section. To raise liability under this Section, mens rea is not an important ingredient. But, suppose, if the drawer has done some miscreant with guilty intention. To say, if the drawer issues the cheque knowing well at the time of issuing it that it will get dishonoured on presentment and he has done it to play fraud on the payee, it constitute cheating under Section 415 of Indian Penal Code, 1860. Thus, the liability under Section 138 of the Negotiable Instruments Act is in addition to the liability under the Indian Penal Code and there is nothing wrong in issuing proceedings under both of them.

Vicarious liability in cases of dishonour of cheques

Vicarious liability is a very important concept of law. Generally, a person is held responsible for his own fault only. But, there may be some circumstances in which a person has to be made liable even for the acts of another. Such situations have arisen due to complexities in the society and development of business and transactions. So, a new development came into light in case of *Tuberville v. Stamp*¹¹. In this case, Sir John Holt held that the master would be held liable for his servant's wrongful acts, if he had been given implied authority by the master. Thus, the master is liable for the wrong of servant, if he commits it during the course of his employment. This decision is the very basis of the vicarious liability. Thus, holding one person liable for the acts of another is called vicarious liability.

Moreover, the concept of legal personality has also come into vogue. Rather, it is becoming more and more popular. Today, more and more authorities are being conferred with legal personality to make them accountable for their obligations. The same applies on company also. It is well known that company is a legal person. It cannot do anything by its own. Its works are done by its officials. But, the problem arises if those officials do anything wrong. In such situation, question arises as to who should be made liable in the interest of justice.

In *Nikhil P. Gandhi v. State of Gujarat*,¹² the court has held: "the term, vicarious liability", in its legal parlance, means the liability of the master for the acts of the servant or agent done in

¹¹ (1697) 1 Ld Raym 267. See also Warren Swain, A Historical Examination of Vicarious Liability: A Veritable Upas Tree?, *The Cambridge Law Journal*, Volume 78 Issue 3, November 2019, pp. 640 – 661.

¹² 2017 (1) RCR (Cr.) 15

the course of employment. Section 141 makes a natural person vicariously liable for the contravention committed by a company provided such person has some nexus with the crime either because of his connivance with it or due to by criminal negligence which had bad result in its commission.”

Vicarious liability of companies in cases of dishonour of cheques

Particularly as it pertains to Indian law, vicarious liability in cases of cheque dishonour is governed by Section 141 of the Negotiable Instruments Act of 1881. This particular provision expands the accountability for the transgression of a dishonoured cheque beyond the organization to include the individuals in positions of authority at the time the transgression occurred.

Section 141 delineates the following salient aspects pertaining to the vicarious liability of corporations:

1. The company that issued the cheque is regarded as the principal offender in cases of cheque dishonour. It is believed that an organization operates via its personnel and representatives.
2. Liability of Company Officers: Not all employees are susceptible to liability; rather, only those who were in a position of authority and accountability for the operation of the company during the commission of the transgression are culpable. This typically consists of managing directors, full-time directors, or other officers responsible for the company's daily operations.
3. In order for individuals to be deemed liable, it is imperative that there be precise allegations that delineate their position and accountability within the organization during the commission of the offence. Merely holding a general capacity as an officer of the company is inadequate.
4. Exceptions and Exclusions: The company may not be liable if the cheque was issued by an employee for personal reasons and not in the course of business. In addition, a director or officer who resigned prior to the cheque being issued or who serves as a non-executive director not engaged in daily operations cannot be held vicariously liable.
5. Inclusion of the Company as an Accused in the Lawsuit: In order to establish liability for individual culpability, the lawsuit must name the company as an accused party. Officers' liability is dependent on the company's status as the primary offender.

6. "Contingency of Suit if Company Is Closed": In the event that a company is dissolved in the course of the proceedings, those who lodged the complaint during the company's active phase remain subject to prosecution.

Practically speaking, the implementation of Section 141 means that legal repercussions may be levied against both the entity and the individuals accountable for the company's operations at the time a cheque issued by the company is dishonoured for reasons such as insufficient funds or those specified in Section 138 of the Act. The purpose of Section 141, as consistently determined by Indian courts, is to prevent individuals in positions of authority over the company's finances and decision-making processes from evading responsibility by exposing their true selves beneath the corporate veil.

Dishonour of cheque issued by firm

In India, the legal framework governing the dishonour of cheques is primarily outlined in the Negotiable Instruments Act, 1881, with Section 138 of the Act being particularly relevant. This section makes the dishonour of a cheque for insufficiency of funds or because it exceeds the amount arranged to be paid from that account a criminal offense, subject to certain conditions being fulfilled. The Act outlines a specific procedure to be followed in the event of a cheque dishonour, which includes legal implications and steps that can be taken both by the issuer (drawer) of the cheque and the recipient (payee).

When a cheque issued by a firm is dishonoured by the bank due to insufficient funds or any other reason specified under the Act, the payee is entitled to send a legal notice to the drawer within 30 days of receiving the 'cheque return memo' from the bank. This notice should demand payment of the cheque amount and inform the drawer of the cheque that they have 15 days to make the payment.

If the drawer fails to make the payment within 15 days of receiving the notice, the payee has the right to file a complaint in a magistrate's court within 30 days of the expiry of this 15-day period. It is crucial for the complaint to be filed within this time frame, or the payee may lose the right to prosecute.

The consequences for the firm or the individuals responsible for the issuance of the dishonoured cheque can be severe under Section 138 of the Negotiable Instruments Act. Upon

conviction, the drawer can face imprisonment for up to two years or a fine which may extend to twice the amount of the cheque, or both. The legal process allows for the settlement of the dispute at various stages, and courts often encourage parties to settle the matter out of court if possible.

It's important for firms to understand that the dishonour of a cheque can have significant legal and financial repercussions. It not only subjects the firm to potential criminal charges but also civil liabilities for the recovery of the cheque amount along with any penalties or interest as adjudicated by the court. Furthermore, incidents of cheque dishonour can adversely affect the firm's credit rating and reputation, potentially impacting its business relationships and access to credit facilities in the future.

To mitigate these risks, firms should ensure they have sufficient funds in their account before issuing a cheque and closely manage their financial commitments. In cases where financial difficulties might prevent a cheque from being honoured, proactive communication with the payee to negotiate a resolution can be a more favourable approach than facing legal proceedings.

Conclusion

Usually, live things commit crimes. Because only natural people can create guilty intent or act on it. Lawful due process is followed for such offenders. Legal persons may be accused of crime in some cases. Humans usually commit cheque dishonour under section 138 of the Act, 1881. If the accused is a legal person, we must follow unique rules. It's justified since juristic persons are unique. The Negotiable Instruments Act also makes particular provision for this. Corporations will be prosecuted for cheque dishonour under Section 141 of the Negotiable Instrument Act. It's evident from this section's phrasing. The term "Company" is defined broadly in this section. Firms and other associations are included. Partners will be treated as corporate directors. Thus, one cannot avoid culpability on any frivolous grounds and will be prosecuted whether human or artificial.

General legal idea that one must investigate facts before trading. So, before doing any business with a firm, one should check its promoters, Board of Directors, Memorandum, and Articles of Association to ensure its reliability and validity. Other than these, a person cannot verify facts. People may not know the company's internal management. Thus, the individual dealing with

the corporation may only know who was in control and accountable to it for its business at the time of cheque issuance. His knowledge that the cheque-signer is ineligible may not be expected. Company internal management covers such facts. The victim of a dishonoured cheque may claim that the signer was in charge of the company.

Section 141 imposes vicarious liability on company employees. The corporation is to fault. This concept is an exception to the criminal law norm that vicarious liability does not apply. This provision produces legal fiction. This provision solely infers vicarious liability if the company is registered under current law. The law must be strictly applied to make someone vicariously accountable.

If the corporation is an offender, the Directors or other executives are not automatically accountable unless otherwise stated. Authentic example: Negotiable Instruments Act Section 141. It is prudent to penalize the guilty party as he is the true offender. Company is statutory. Self-functioning is impossible. Thus, the criminals who run its business should be punished since their actions impugn the corporation. This is how to read Section 141. This provision states that when a firm commits a crime, some individuals and the company are accountable for cheque dishonour. The legislature's goal is apparent. This section clearly makes firms and their employees responsible via deeming clause. The deeming clause matters. The principle of "alter ego" is enforced in one direction, i.e., when corporate leaders are culpable and imputed to the corporation, but the reverse is silent.

Not all company employees will be held accountable. Only those in charge of the company's business activity at the time of the offense can be prosecuted. Directors may not be held liable if they were not responsible for the company's business at the time in question. Not holding a company position makes it responsible. The company's regular operations are its foundation. A person who is in charge of the company's business but does not have an office may be tried. The person's job in the organization determines liability, not status. It is also clear that the law does not intend to criminalize solely directors, managers, or secretaries. If it meant it, it would have said so. But the provision says "every person". Lawmakers knew criminal responsibility might have devastating implications. Thus, they used words wisely. They only held people associated to the corporation who were in charge of its commerce at the time the cheque was issued liable.

Sec.141 (2) assumes managers, secretaries, etc. are intimately involved in company operations.

This section also holds holders liable if a trial proves that the offence was committed with the agreement and collaboration of a firm or due to negligence. The assumption is already made for Joint Directors, Managing Directors, etc. Anyone associated with the company is liable for his actions on its behalf. Thus, the complaint must include all relevant information to convict.

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