

# RECENT AMENDMENTS UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881: PROBLEMS & PROSPECTS

**Pratiksha Bansal**

Law College Dehradun, Uttarakhand University, Dehradun 248007, Uttarakhand, India

**Ganesh Vikram Singh**

Law College Dehradun, Uttarakhand University, Dehradun 248007, Uttarakhand, India

**Dr. Sandhya Verma**

Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun 248007, Uttarakhand, India.

**Dr. Vaibhav Uniyal**

Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun 248007, Uttarakhand, India

**Dr. Jitendra Singh**

Associate Professor, Law College Dehradun, Uttarakhand University, Dehradun 248007, Uttarakhand, India

## ABSTRACT

The Negotiable Instruments Act of 1881 amended the laws governing legal tender, Bills of Exchange and Cheques. The Act was introduced in 1881 with the intention to encourage the growth of economic and monetary activities. The main objective was to legalise the design of negotiable instruments. The Act has been updated and amended on multiple occasions with the aim to maintain and strengthen trust in negotiable documents especially cheques because with the previous prevailing laws people were losing their trust in cheques due to numerous frauds. To increase the credibility and to standardise the use of cheques with the quickly growing global commerce an effective changes in the act was needed at the time. On a continuous schedule, modifications were introduced, primarily to tighten the severe liability for cheque disqualification and to address any future flaws. The necessary amendments in the act prompted the ease of doing business thru cheques. In this article, the author has made efforts to look at the amendments introduced to the Negotiable Instrument Act. In addition, the article sheds clarity on the judiciary's perspective in various revised Sections.

**Key Words:** Negotiable Instruments, cheque, banking, legislations.

## INTRODUCTION

The Negotiable Instruments Act, 1881 which will be known as the NIA of 1881 further in this article. The main target to bring amendments in Section 138 of the NIA is to dispose of the cases relating to dishonour of cheques on a prior basis, to intensify the strictness and punishments for the offenders, to institute an electronic image of a truncated cheque and to establish cheque in electronic form as well as immune an official nominee director from prosecution under the Act.

In 1988, The Hon'ble Supreme Court held that Section 138 as well as several other provisions in Chapter XVII, was included to improve the usage and credibility of cheques in settling the liabilities that the drawer of a cheque is rendered liable to prosecute a case for cheque dishonour, so to avoid harassment of genuine drawers. (M/S Meters Instruments Private Limited v. Kanchan Mehta, 2017)

The Hon'ble Supreme Court has explained the objective of chapter XVII in their judgement. In relation to the respondent's demand for compensation, we are aware of the well-established principles that the purpose of Chapter XVII of the NIA is not only punitive, but also compensating and restitutive. The provisions of the NIA foresee a single point of contact for criminal culpability for cheque dishonour as well as civil liability for the amount of the cheque. It is also widely established that there must be a consistent approach to awarding compensation, and that unless unusual circumstances occur. If the courts find that the cheque was issued in error, they should fine the recipient up to twice the amount, plus interest at 9% per annum.(M/s. Kalamani Tex & Anr v. P. Balasubramanian, 2021)

## **I. THE DEVELOPMENT OF THE NEGOTIABLE INSTRUMENTS ACT OF 1881 REGARDING AMENDMENTS**

The NIA of 1881 was enacted to clarify and alter the laws related to the regulation of various types of financial instruments, such as cheques, negotiable instruments, and bills of exchange. The number of lawsuits filed in Indian courts regarding the issue of cheque dishonour problems is massive. As per Section 138 of the NIA of 1881, there are around 20% of lawsuits related to this issue. In 1988, a new chapter was added to the NIA to provide for harsher sanctions in cases of repudiation due to insufficient money in the drawer. The NIA of 1881 was in the 1980s when a new chapter was added to provide for harsher sanctions in cases of repudiation due to insufficient money in the drawer. The objective of these measures was to encourage the use of cheques and strengthen their validity. The amendments made dishonour a criminal offence and provided for penal accountability on the drawer.

NIA is founded entirely on English law principles, and if no special considerations arise on the topic of Indian events, courts are justified in construing statutes in accordance with English law provisions that follow the general industrial regulation of the rest of the sector. There are some discrepancies between the English Act and the Indian Act, which came a year before the former. However, the two Acts are very similar. The Contract Act is a well-known Indian law that governs contracts. The NIA is a legislation that deals with special types of contracts, and it typically takes precedence over rules of popular law. (Effect of Recent Amendments in Negotiable Instruments Act on the pending Cases as Well as Appeals., 2016)

## **II. THE NEGOTIABLE INSTRUMENTS (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2002**

This amendment is considered to have entered into operation on December 17, 2002 to amend the Act and, amongst other things, to streamline the procedure for dealing with such matters. The amendment also provides that the courts can now serve summons through the use of Speed Post or Courier. This is because, in many cases, the cheque was issued to cheat creditors. The Court noted that this provision will help make the transactions easier for businesses. Cheque dishonour creates enormous cost, injury, and difficulty to the payee, and undermines the integrity of commercial operations. (Mr. Chico Ursula D'Souza v. M/S Goa Plast Pvt. Ltd, 2008)

Following are the Amended Sections-

➤ **SECTION 6**

By the following amendment, Section 2 was replaced with Section 6 i.e-

The definition of a cheque includes a cheque in electronic form and the electronic image of a truncated cheque. In general, a cheque is a bill of exchange where the drawer promises to pay a certain amount to the holder at the maturity of the cheque. It confers a duty on the bank to pay on behalf of the drawer on demand.

➤ **SECTION 131**

Following the amendment, Explanation was renumbered as Explanation I and also Explanation II was inserted as-

The banker is also responsible for ensuring that the payment made using an electronic image of a forged or fraudulent cheque is made through a proper verification of the authenticity of the document. In order to do so, he or she must first confirm the validity of the document and its authenticity through due diligence and regular care.

➤ **SECTION 138**

Section 138 comprised the phrase "a term which may be extended to one year." But after the amendment, it was substituted with "a term which may extend to two-years"

In clause (b) of Section 138, the phrase "within fifteen days" is replaced with "within thirty days."

➤ **SECTION 141**

Following the Amendment, the additional proviso was added as:

This Section excludes individuals who are nominated as directors of a company on the basis of their employment or office in the Central Government or the state government. They are not liable for prosecution if the case is that they held such office or employment in a financial corporation or financial institution controlled by the government.

➤ **SECTION 142**

By the following the amendment, the additional proviso was inserted after clause (b) in Section 142 as-

If a complaint has been made against a bank, the court can take the necessary steps to determine the cause of the issue and resolve it. If the court is satisfied that the banker had enough reason to not make a complaint, then the complaint can be taken up.

Following are the Amended Sections-

➤ **SECTION 143**

The court has the power to cope with instances that fall under the jurisdiction of the Judicial Magistrate first class or a metropolitan magistrate, & from Section 262 to Section 265 of the Cr.P.C must be implemented based on the details of the matter. It moreover stipulates that once a lawsuit is brought, proceedings must be held on a regular basis until the matter is finalised and that in extraordinary situations, the court must justify the grounds for not holding a trial the next day. The matter brought within this Section must be resolved within six months of the complaint being submitted. This practise would have been in accordance with the pursuit of righteousness. (262, 1973)

➤ **SECTION 144**

Describes mode of serving the summons, when a Magistrate delivers a summons to an accused; he shall send a copy of the summons to the address where the accused initially lived, currently operates, or individually performs for profit, using speed post or even other delivery services that the Court of Session may permit. This is likewise valid in the context of informants. The accused or observer shall verify the

confirmation of delivery in presence of the individual appointed by the Postal Department. If the accused or witnesses declines to acknowledge the summons when it is delivered, the judge must assume that the notice has really been obtained properly.

➤ **SECTION 145**

- (a) Irrespective of the provisions under CrPC, the evidence of the complaint can be given by the accused on affidavit and may be read in the record of any proceeding conducted under the Code. This includes trials and other proceedings conducted under the Code.
- (b) The court may also examine the evidence of the complaint on the basis of the facts contained in it. It can also summon and examine the witnesses who have given evidence on the affidavit.

➤ **SECTION 146**

Section 146 provides that a bank's slip or memorandum showing that the cheque was dishonoured is a proof of the fact that the cheque was issued. If the proof of the dishonour is not disproved, the court will not consider the same as proof of the validity of the cheque.

➤ **SECTION 147**

All the offences committed under this Act were made compoundable.

**The Negotiable Instruments (Amendment) Act, 2015**

During the winter session of Parliament, the Negotiable Instruments (Amendment) Bill 2015, was passed. The President then notified the Act in the Gazette of India on December 26, 2015 as the Negotiable Instruments (Amendment) Act, 2015. The Act was then published in the Gazette of India on June 15, 2015. The objective of this Act was to enhance the powers of the NIA.

In a Judgment delivered on August 1, 2014, the Supreme Court held that the territorial jurisdiction of courts over the issue of dishonour and cheque writing is restricted to those courts which are within the jurisdiction of the bank where the offence was committed. This means that courts cannot entertain cases related to the dishonour of cheques issued by the bank which is located outside the court's jurisdiction. As per the Judgment of the Supreme Court, the number of cases under Section 138 of NIA was transferred to the courts having jurisdiction over them. In addition, various representations were also made by the government to the concerned agencies, stating that the said judgment would offer undue protection to the defaulters. The Act passed by the Parliament in 2015 inter-alia provided for the insertion of new Section 142A of the Act. This Section would help the courts in handling the cases related to the transfer of jurisdiction.

(Dashrath Rupsingh Rathod v. State of Maharashtra and another, 2009)

The said ordinance was already in force before the bill was passed. The provisions of the Act, which are related to the transfer of jurisdiction, are currently governed by this amendment-

Following are the Amended Section-

➤ **SECTION 6**

Under this amendment, the definition 'electronic form of a cheque' & definition for 'truncated cheque' was introduced as well as Explanation 1 was substituted from Section 2(i) to clause (a).

As per this Section a 'cheque is an electronic form' that is drawn using a computer resource and is signed using either a digital signature or an asymmetric crypto system. This type of transaction is commonly used for payments.

'A truncated cheque' is a type of bill of exchange that is sent or received during a clearing cycle, either by the bank or the clearing house. It can be replaced by an electronic image. The electronic image is generated automatically, and the physical movement of the cheque is taken out of the equation.

Explanation III was inserted with this amendment as-

For the purposes of this Section, the terms asymmetric crypto system, electronic signature, computer resource, and digital signature. The meanings of these terms are similar to those of the Information Technology Act of 2000.

#### ➤ **SECTION 142(2)**

After amendment Clause 2 of Section 142 was inserted as-

Only a court having local jurisdiction can investigate and can conduct the trial for the offence committed under Section 138

- a. If a cheque is delivered to a branch of a bank for collection, the account, where the payment is made can maintain the account where the holder or the payee is located.
- b. If a cheque is presented to a branch of a bank for collection, the account where the payment is made can maintain the account where the holder or the payee is located.

#### ➤ **SECTION 142A**

A new Section 142A was incorporated under this amendment as-

- I. If a case is transferred to a court which has jurisdiction under Section 142(2) such transfer shall be deemed to have been transferring under this act, irrespective of any orders, judgements or decree passed by any court or anything contained in CrPC.
- II. If a payee makes a complaint against a cheque drawer under Section 142(2) or the matter is moved under Section 142(1), any complaints arising under Section 138 against that drawer must be filed in that court, regardless of whether the cheques are within that court's jurisdiction.
- III. If a payee files more than one case against the same drawer in various courts before the start of this Act, and the court is aware of this, the court shall transfer all of the cases to the court with jurisdiction under Section 142(2), where the first case was filed and is still pending.

### **THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018**

The purpose of enacting the aforementioned amendment was to ensure that if there was intent to defraud, the defaulter would be held liable in a criminal trial. The goal was to impose some level of accountability on the cheque drawer as well as sincerity in issuing the cheque. Later, the restrictions were expanded to include a repudiation of a cheque for the signature discrepancy and block payments. However, nearly thirty years after the amendment was passed making cheque dishonour a serious crime, it was discovered that cheque bouncing instances are addressed similarly to other civil issues. Recently, it has been seen that criminal cases involving cheque bounces are diminishing their credibility. The use of cheques to make payments is very important in business operations. Despite the availability of various payment options, the most common method of payment remains by cheque.

The NIA of 1881 has been revised now and again to ensure, among different things, a fast decision in situations regarding cheque dishonour. Despite this, the Central Government changed into getting several lawsuits from the public, considerably the trade network, regarding the popularity of cheque failure cases. The equal can be attributed to the delaying methods used by dishonest cheque drawers due to the simplicity

with which they can report demanding situations and are seeking a suspension of litigation. The authenticity of the cheque operations becomes jeopardised because of those delays.

Section 143 A & Section 148 was incorporated through this amendment act.

➤ **SECTION- 143A**

Section 143-A empowers the court to order the drawer of a cheque to pay interim compensation to the aggrieved party under Section 143-A of the Act. This Act provides that the compensation amount should not exceed 20% of the original amount in the cheque. This period of 60 days must be followed by another period of 30 days, and the court may also order the drawer to provide the requested compensation within the next 30 days. If the court determines that the delay caused by the drawer's failure to provide the requested compensation is due to a lack of cause, it may also order the drawer to provide the requested compensation within the next 30 days.

The interim damages due under this provision may also be reclaimed as a penalty under Section 421 of the CrPC, 1973. The maximum fine levied per Section 138 of the NIA or the amount of damages granted under Section 357 of the CrPC will be decreased later by the temporary payments made or reclaimed (Amendments to the Negotiable Instruments Act, 2018).

However, Section 143 does not apply retrospectively.

➤ **SECTION-148**

Section 148 provides that in the event that the drawer of a cheque is convicted of a crime, the court can order the company to deposit an amount to initiate the proceeding of appeal. This amount should not exceed 20% of the fine or compensation that the magistrate court has already issued. If the court determines that the delay caused by the drawer's failure to provide the requested compensation is due to a lack of cause, it may also order the drawer to provide the requested compensation within the next 30 days.

In the latest Judgment, the Hon'ble Supreme Court of India clarified the retrospective application of the amendments made to Section 148 of the Act. The new Section 148 of the Act is applicable to all criminal complaints filed under Section 138 of the NIA prior to the enactment of the NI Amendment Act. The Supreme Court has noted the importance of the amendment of Section 148 of the NIA aims to eliminate the unfair and inefficient practice of delaying for the recognition of the dishonour cheque value by the drawer. The court noted that the delay in the compensation being paid to the victims of a fraud has caused them to spend a lot of time in court. The court explained that the delay in the dishonour cheque's recognition by the drawer has caused it to affect the integrity of the transactions. The Parliament decided to introduce an amendment to the Act in order to address this issue. The court also noted that the amendments made under Section 148 of the Act will be applicable to all appeals filed by the courts, even those involving criminal complaints that were not brought before the Act was enacted. (Surinder Singh Deswal @ Col S S & Ors v. Virender Gandhi, 2019)

The Hon'ble High Court of Punjab & Haryana observed that the amended clause allows for the collection of interim compensation by coercion, it is nothing more than a legal duty imposed on the accused. The definition of the phrase "obligation" has been defined in Section 3 of the Specific Relief Act, which states that every duty enforceable under the law is an obligation. This meaning must be comprehended in all Central Acts except differently defined in the relevant Act, according to the General Clauses Act. Such an 'obligation' impacting the accused property rights must be considered as a substantive provision affecting his substantive right by imposing a substantive duty on him to pay money; and, if not paid, subjecting him to legal deprivation/disability qua his property rights. As a result, it must be determined if Section 143-A of the Act imposes a substantive requirement on the accused and so affects the accused's substantive right. Because the Amendment Act does not make the provision retroactively applicable, especially to existing cases, it cannot be applied retrospectively to pending proceedings arising from the default of the accused that occurred prior to the effective date of this provision. (M/S Ginni Garments And Another vs M/S Sethi Garments , 2018) Therefore, Section 143-A has no retrospective effect, while Section 148 only applies to

outstanding challenges on the date of adoption of the new modification. The accused is subject to a substantial responsibility under Section 143-A of the Amended Act, according to the High Court.

### **CONCLUSION**

Despite the fact that the act has been revised several times to aid in the fast disposition of cases involving the charge of cheque dishonour, there has been unhappiness with the length of time that such cases have been pending. As a result of the delay, The public's trust cheques are used as a model for payment for everyday transactions is eroding. Furthermore, the payee is treated unfairly because he or she must spend time & money in court to recover the value of the cheque. To address this, the previously mentioned measures were enacted, that allow short term respite to the aggrieved till an ultimate judgement is rendered by the court, so preventing a needless lawsuit. The proposed amendments were also aimed at addressing the issue of the undue delay in the settlement of the various cases involving dishonour cheque. They would also encourage the use of electronic funds transfer and provide relief to the victims of frivolous and needless litigation. The proposed revisions would also help improve the reliability of cheque and support the commerce and trade sectors of the economy. (Rajesh Soni vs Mukesh Verma, 2021)

The Indian judicial system is dealing with a significant backlog of cases, and according to the 213th Law Commission Report, nearly 20% of all cases involving litigation involve cheque bounce. As a result, the newly enacted measures will breathe fresh life into the provisions of the N.I Act 1881 that have been dormant for a long time. Even though cheque fraud cases are criminal in nature and result in a criminal conviction, the provisions of the summary trial are still on the books, and the fact that the charge is now bailable has made cheque fraud cases resemble civil disputes. In this approach, the newly enacted requirements would be a constructive move toward ensuring trustworthiness.

### **SUGGESTIONS**

1. The principles of the Dashrath Rupsingh Rathore Case as discussed above, was very beneficial to the borrowers and the courts in terms of settling their disputes. However, it is very evident that the amendments passed by the parliament in 2015 are against the welfare of the common people. As a result, the corporate bodies and the other organizations are collecting huge amounts of money from the people all across India and are sending the cheques far away to be deposited at the designated place.
2. According to Section 143(3) of the Act, the trial should be completed within six months of the filing of the complaint. However, this rule is a total paradox as the accused has to provide 60 days to repay the amount, and the court can also give an additional 30 days to the accused to make the payment. This means that the trial would be very long and it would not be possible to conclude it in six months.
3. The Reserve Bank of India may establish a center for the enforcement of cheque dishonour cases. It will also create a database where banks can register the details of their customers who have outstanding debts of over five lakh. These customers should not be issued new cheques until the entire amount is cleared.
4. While returning an unpaid cheque, the drawee bank should also provide a reason for the return, instead of following the old method of referring to the drawer or the payment stopped. Banks should also be more transparent about the reason for the failure to honour the cheque, as it could have exceeded the arrangement made with the bank. This will help both the bank and the customer avoid unnecessary litigation and facilitate the quick disposal of the complaints. It is also important that the Reserve Bank of India or an association of banks make necessary changes in the banking practices to improve the transparency of the transactions.
5. Although banks usually charge a small service fee for the return of a bounced cheque, this is insignificant compared to the amount of money that the cheque would have fetched. The

- deterrent effect of the fee should be based on the number of times that the cheque was bounced and the amount of money involved.
6. If a person repeatedly commits the offense of dishonour of a cheque for three times within a period of 12 months, then the issue of such cheques will be prohibited for the next two years. An enhanced penalty will also be provided for such instances.
  7. If a bank has evidence that the person has made multiple instances of dishonour of a cheque for more than three within a twelve month period, it can freeze their account.
  8. If a person has been convicted of committing the offense is a corporate body, the bank accounts of the company where the offence occurred should be notified. The details of the individuals who are liable for the damages should also be made public.
  9. If the amount of the dishonour of a cheque is more than one crore, then the Regulatory Authority viz S.E.B.I may not allow the company's share trading to be carried out until the entire amount is paid. These can be done through the help of the court and the law can also be changed.

### Bibliography

262, S. (1973). *The Code of Criminal Procedure*.

6, S. (1881). *The Negotiable Instruments Act*.

*Amendments to the Negotiable Instruments Act*. (2018, October 3). Retrieved March 13, 2022, from OBHAN & ASSOCIATES: <https://www.obhanandassociates.com/blog/amendments-to-the-negotiable-instruments-act/>

Dashrath Rupsingh Rathod v. State of Maharashtra and another, 2287 (The Supreme Court of India 2009).

Dutta. K., G. V. (n.d.). *The Negotiable Instrument (Amendment) Act, 2018 - an Overview*. Retrieved March 22, 2022, from LEXOLOGY: <https://www.lexology.com/library/detail.aspx?g=070d1241-a9ed-4dc1-8deb-27bbf81dea99>

*Effect of Recent Amendments in Negotiable Instruments Act on the pending Cases as Well as Appeals*. (2016, February 23). Retrieved May 10, 2022, from Title NO.200(As Per Workshop List title no200 pdf): [http://mja.gov.in/Site/Upload/GR/Title%20NO.200\(As%20Per%20Workshop%20List%20title%20no200%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.200(As%20Per%20Workshop%20List%20title%20no200%20pdf).pdf)

Finance, M. o. (n.d.). *The Negotiable Instruments (Amendment) Bill, 2017*. Retrieved March 10, 2022, from PRS Legislative Research: <https://prsindia.org/billtrack/the-negotiable-instruments-amendment-bill-2017>

M/S Ginni Garments And Another vs M/S Sethi Garments , 9872 (In The High Court Of Punjab and Haryana at Chandigarh 2018).

M/S Meters Instruments Private Limited v. Kanchan Mehta, 1731 (The Supreme Court of India October 05, 2017).

M/s. Kalamani Tex & Anr v. P. Balasubramanian, 123 (The Supreme Court of India February 10, 2021).

Mr. Chico Ursula D'Souza v. M/S Goa Plast Pvt. Ltd (Bombay High Court June 25, 2008).

Rajesh Soni vs Mukesh Verma, 562 (High Court Of Chhattisgarh, Bilaspur 2021).

Singhania, K. (2019, June 9). *Section 138 Of Negotiable Instruments Act: Overview*. Retrieved March 10, 2022, from Mondaq Connecting Knowledge and People: <https://www.mondaq.com/india/financial-services/812822/Section-138-of-negotiable-instruments-act-overview>



Surinder Singh Deswal @ Col S S & Ors v. Virender Gandhi, 1936-1963 (The Supreme Court of India 2019).

*The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.*

*The Negotiable Instruments (Amendment) Act. (2015).*