



## AN ANALYTICAL STUDY ON THE PROPOSED AMENDMENT IN NEGOTIABLE INSTRUMENT ACT, 2017: A STEP TOWARDS DEVELOPMENT OF JUDICIAL SYSTEM IN INDIA

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### Abstract

*In this continuously growing world where development has become the goal of every nation, trade and commerce sector pays a major contribution to this growth. So as to regulate make this sector more developed the act of Negotiable Instruments Act was introduced with an objective of increasing the credibility and so as to gain more confidence of citizens in paper currency in this race of digitization. With time every law needs amendment so was the case with the NI Act; from 1881 to 2017 it covered a journey of amendments been made by legislature but still the objective of the act was left halfway, the legislature then introduced the concept of interim compensation. This article discusses about the newly proposed amendment in NI Act, about the objective of NI Act which legislature wants to fulfill through this amendment. It also discusses about the constitutional right of speedy trial and its implication in practical life. The objective of writing this article is to make a clear picture of the amendment by stating its pros and cons and how this amendment can be a landmark change in law.*

**Keywords:** cheque dishonour, amendments, article 21, interim compensation, practical scenario.



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## INTRODUCTION

The commonwealth of nations in almost all jurisdictions have codified law relating to negotiable instruments in Bills of Exchange Act, e.g. Bills of Exchange Act 1882 in the UK, Bills of Exchange Act 1908 in New Zealand, Bills of Exchange Act 1909 in Australia, the Negotiable Instrument Act, 1881 in India and the Bills of Exchange Act 1914 in Mauritius. The Bills of Exchange Act defines a bill of exchange as:

An unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money or to the order of a specified person, or to bearer.<sup>1</sup>

<sup>1</sup> R Singh, the law relating to negotiable instruments,  
[http://shodhganga.inflibnet.ac.in/bitstream/10603/7935/7/07\\_abstract.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7935/7/07_abstract.pdf).

## **HISTORICAL DEVELOPMENT OF LEGISLATION**

The earliest attempt to codify a law relating to mercantile usages was made in France as early as in the year 1818 and the French Commercial Code was later adopted as a model by many other countries.<sup>2</sup>

In England, the movement for such a codification of the law relating to merchants usages materialized only in 1880 when Sir Mc Kenzie Chalmers drafted a Bill which was later enacted as Bills of Exchange Act, 1882. This English Act had the distinction of containing a provision by way of s. 13(2) which stated that a bill is not invalid by reason that it is ante-dated or post-dated.

The history of law relating to Negotiable Instruments as applicable in India as codified in the pre-independence era, is a long one.

The 3<sup>rd</sup> Indian Law Commission originally prepared a draft of this legislation in 1866. Thereafter, the draft legislation was introduced in the Council in December, 1867 and the Council referred it to a Select Committee.

This draft legislation met with strong objections raised by the mercantile community on multifarious aspects, including the aspect of certain deviations from English Law which the Legislation contained. This led to the initial draft of legislation being subjected to redrafting in 1877 so as to meet the objections and demands of mercantile community.

After needful deliberation on this draft legislation, including criticism by the Local Governments, the High Courts and the Chambers of Commerce, the draft bill was revised by a Select Committee. In spite of this, the draft Bill could not attain a finality.

In 1879, Mr. Arthur Philips, the then Law Secretary and a Member of the Calcutta Bar, redrafted the Bill. This Bill, after passing through the Select Committee more than once, was again referred to a new Law Commission in 1879.<sup>3</sup> On the recommendation of the new Law Commission, the Bill was re-drafted and again it was sent to a Select Committee which adopted most of the additions recommended by the new Law Commission. The draft thus prepared for the fourth time was introduced in the Council and was passed into law in 1881 being the Negotiable Instruments Act, 1881.<sup>4</sup>

## **ORIGIN OF NEGOTIABLE INSTRUMENT ACT**

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<sup>2</sup> Justice Ranjana Prakash Desai, BM Prasad & Manish Mohan, Khergamvala on the Negotiable Instrument Act, 4(21<sup>st</sup> Edition, 2013).

<sup>3</sup> 11<sup>th</sup> Report- Law Commission of India, 1958.

<sup>4</sup> Act no. 26 of 1881; For 'Statement of Objects and Reasons' see Gazette of India, 1876, page 1836; For 'Report of the Select Committee'.

In the ancient times, trade was carried along the routes which were insecure and traders were usually robbed of their wealth by roving pirates of sea and by marauding robbers on land. This was the time when Bills of Exchange, an idea of exchange came into existence. Letters of Credit, generally called Bills of Exchange from a merchant of one country to his debtor who was a merchant of another country, were issued, requiring the debt to be paid to a third person who carried the letter of credit to a place where the debtor resided. A bill of exchange was, thus originally an order to pay a trade- debt, and a system of such bills afforded a convenient and facile way for the payments or debts in one country due to a person in another, without the danger of encumbrance of carrying money from one place to another.<sup>5</sup>

### **WHAT IS NEGOTIABLE INSTRUMENT?**

Negotiable instrument is a certain type of document which is used in commercial transaction and includes a promise to pay a specific amount to the bearer of the document. It is basically a transfer of debt from one party to other. Some of the examples where the true owner transfers contract or engagement by simple delivery of instrument are- a cheque, a promissory note, a bill of exchange.

### **OBJECTIVE AND SCOPE OF THE ACT**

The Negotiable Instruments Act, 1881 was enacted so as to legalise the system of negotiable instrument of passing from hand to hand negotiation and to make the world of trade and commerce less complicated. Had these instruments such as cheque, bills of exchange not been there the situation in the commercial world would have been unsystematic and complicated as it is impracticable for the trading community to carry on with it the bulk of currency in force.

### **INTRODUCTION TO DISHONOR OF CHEQUE- A CRIMINAL OFFENCE;**

#### **SECTION 138**

Introduction of Section 138 of Negotiable Instrument Act ushers in a new healthy commercial morality through the instrumentality of penal law. Section 138 deals with the cases of cheque dishonor where any cheque drawn by one person to pay an amount to other person for any debt or liability is returned by the bank unpaid because of insufficient funds or it exceeds the amount arranged to be paid from that account by an agreement made by the bank. There are certain essential requirements for filing a criminal complaint against the drawer in case of cheque dishonor such as; the cheque is to be presented to the bank within 6

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<sup>5</sup> S. Krishnamurthi Aiyar, Law Relating to The Negotiable Instruments Act, 1 (Tenth Edition, 2009).  
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months from the date on which it is drawn or within the period of its validity, 30 days demand notice is to be issued by the payee or the holder in due course on receipt of information by him from the bank regarding the dishonor of the cheque, the drawer of said cheque fails to make the payment of the said amount of the money to the payee or the holder in due course within 15 days of the said notice and the most essential one is that the debt or liability against which cheque was issued is legally enforceable.

### **AFTERMATH OF AMENDMENTS IN NEGOTIABLE INSTRUMENT ACT, 1886**

The act originally drafted in 1886, produced in 1967 has also been updated by fabricating various amendments with the development in commercial world. May amendments have been produced since 1886 marking a step forward towards achieving the objective of Negotiable Instrument Act so as to inculcate in the efficacy of banking system and credibility of business in commercial world.

In *KSL & Industries Ltd. V. Mannalal Khandelwal*<sup>6</sup>, the Bombay High Court observed:

“Section 138, in fact, has been introduced to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in the account maintained by him in bank and induce the payee or holder-in-due-course to act upon it. In other words, these provisions have been introduced to give greater credibility to our trade, business, commerce and industry, which is absolutely imperative in view of the growing international trade and business. The constitutional validity of these provisions has been upheld by the Supreme Court.”

A comparative study as to know the situation before and after amendments been made to the act and its impact on commercial world.

In *Goa Plast (P) Ltd. v. Chico Ursula D'Souza*<sup>7</sup>, the Supreme Court, while considering the object and the ingredients of sections 138 and 139 of the Act, observed as under:

“The object and the ingredients under the provisions, in particular, sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was

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<sup>6</sup> 2005 Cri. L. J. 1201 (Bombay).

<sup>7</sup> JT 2003 (9) SC 451.

eroded to a large extent. Undoubtedly, dishonor of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. The Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.”<sup>8</sup>

#### THE NEGOTIABLE INSTRUMENTS (AMENDMENT), 2002

With the increasing cases of dishonor of cheque and their increasing pendency the legislature made an amendment in 2002 so as to plug the loopholes of the Negotiable Instrument Act. With the sense of achieving the goal of speedy trial the amended act enabled a Judicial Magistrate or magistrate of the First Class to conduct the trial. It also states that the trial is to be completed within 6 months of filing the complaint, also it empowers the Magistrate to pass a sentence for imprisonment for a term not exceeding twice the amount of cheque notwithstanding anything contained to the contrary in CrPC.

NEW DIMENSION TO LAW- *Dashrath Rupsingh Rathod v. State of Manaharashtra & Anr.*<sup>9</sup>

In Dashrath Rathod Case the Hon. Supreme Court observed that :

"Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavor is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. The court held that, the territorial jurisdiction according to section 138 or under the act should exclusively be determined and considered by place/location of the offence. The return of the cheque by the drawer bank only constitutes commission of offence under section 138. Hence, the courts within which drawer bank is located will only have the jurisdiction to try the case."<sup>10</sup>

#### THE NEGOTIABLE INSTRUMENTS (AMENDMENT), 2015

- The Negotiable Instruments (Amendment) Bill, 2015 was introduced in Lok Sabha on May 6, 2016.

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<sup>8</sup> Ibid at 7.

<sup>9</sup> AIR 2014 SC 3519.

<sup>10</sup> Ibid at 9.

- The Act Specifies conditions and circumstances under which complaints for cheque dishonor under Article 138 can be filed, but the Act does not mention about the territorial jurisdiction of the courts where complaints are to be filed.
- The amendment inserted Section 142(2), a new clause 142A in order to ensure a fair and speedy trial.
- This amendment amends the Act to state that cases bouncing of cheques can be filed only in court whose jurisdiction the bank branch of the payee (person who receives the cheque) lies.<sup>11</sup>
- If a complaint against a person issuing a cheque has been filed in the court with the appropriate jurisdiction, then all subsequent complaints against that person will be filed in the same court, irrespective of the relevant jurisdiction area.<sup>12</sup>
- If more than one case is filed against the same person before different courts, the case will be transferred to the court with the appropriate jurisdiction.<sup>13</sup>
- The Bills also amends the definition of 'cheque in the electronic form'. Under the Act, it was defined as a cheque containing the exact mirror image of a paper cheque and generated in a secure system using a digital signature. The definition has been amended to mean a cheque drawn in electronic medium using any computer resource and which is signed in a secure system with a digital signature, or electronic system.<sup>14</sup>

One can conclude from the above discussion that the evolution of the Negotiable Instruments Act and the jurisdictional debate of cheque dishonor under Section 138, it can be analysed that the amendments which were made by the legislature was a necessity for the Courts and Government to adopt such landmark amendments in law in order to provide justice. But even after these amendments the problem of delayed disposal was not solved which gave rise to introduction of interim compensation in order to reduce the suffering caused to courts and parties due to the pendency of cases and to stop the injustice been caused.

### **BRIEF OF PROPOSED AMENDMENT**

The Negotiable Instrument Act was originally drafted in 1866 by the 3<sup>rd</sup> Indian Law Commission and introduced in December, 1867 in the council. Negotiable instrument act was enacted so as to bring development in trade and commerce sector and as a result from a

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<sup>11</sup> <http://www.prsindia.org/billtrack/the-negotiable-instruments-amendment-bill-2015-3778/>.

<sup>12</sup> Ibid at 11.

<sup>13</sup> Ibid at 11.

<sup>14</sup> Ibid at 11.

long period of time it is been used as one of the convenient modes of transferring money in the commercial mode.

But as the time changes , law also needs to cope up with the change so as to fulfill the objective of particular law. The Negotiable Instruments Act was the first of series of attempts made which was introduced in the commerce sector so as to alleviate the difficulties growing out of conflicting decisions; whereas when one sees the present situation then it is not heading towards achieving act's objective rather the condition is getting worse.

Observing the present situation, amendment has been proposed with a view to achieve the chief objective of act and provide speedy disposal of cases related to the offence of dishonor of cheques.

The Negotiable Instruments (Amendment) Bill, 2017 was introduced in Lok Sabha on January2, 2018. The new provision is proposed to be added in Section 143A which allows a court trying an offence related to cheque bounce to direct the drawer( person who writes the cheque) to pay interim compensation to the complainant. The interim compensation to be paid by drawer will not exceed 20% of the cheque amount and also another condition is that the amount of compensation is to be paid by the drawer within 60 days of the trial court's order. Also the bill specifies circumstances under which compensation may be paid which includes that the drawer pleads not guilty of accusation.

In case of appeal, the appellate court may direct the drawer to deposit a minimum of20% of the fine or compensation awarded by trial during conviction. The amount which will be paid by drawer will be in addition to any interim compensation paid by the drawer during earlier trial proceedings.

If in case the drawer gets acquitted, the court will direct the complainant to return the interim compensation along with an interest. This amount will be repaid within 60 days of the court's order.

### **INTERIM COMPENSATION: STRENGTHENING CREDIBILITY OF CHEQUE**

According to 213<sup>th</sup> report of Law Commission there has been a huge pendency of cases in the court out of which maximum are the cases related to cheque dishonor. Litigation process being very complex increase the amount of pendency of cases which defeats the chief objective of law for which law was enacted. Due to huge pendency of dishonored cheque cases the entire credibility of the business within and outside the country is suffering a serious setback. The very purpose of the above amendment proposed is for speedy disposal of

dishonored cheque cases as dishonor of cheque by bank causes incalculable loss, injury and inconvenience to the payee and the credibility of issuance of cheque is also being eroded to a large extent.<sup>15</sup>

The law pertaining to negotiable instrument act is not the law of one country or of onenation; it's the law of the commercial world in general which was enacted for convenience to traders and so as to regulate the dealings of merchants and mariners in all commercial countries of the civilized world so as to establish justifiable practice in commercial world. But the huge pendency of cases is causing injustice to the payee of a dishonored cheque who has to spend considerable time and resources in court proceedings also such delays compromise the sanctity of cheque transactions as stated in the statement of objects and reasons of the Bill of 2017.

### **VIOLATION OF CONSTITUTIONAL RIGHT FRAMEWORK: DELAYED PROPOSAL AND COMPLEX PROCEDURE**

A fair trial implies a speedy trial.<sup>16</sup> The Constitution expressly doesn't consider right to speedy trial a fundamental right but is implicit in the broad sweep and content of Article 21 of the Constitution as was held by Supreme Court in the case of Surinder Singh v. State of Punjab.<sup>17</sup> The right to speedy trial was first recognized in *Hussainara Khatoon* case.<sup>18</sup>

The chief objective of bringing Section 138 is to gain faith of litigants in the efficacy of banking operations and credibility in transaction and trade business on negotiable instruments. Also this section has been introduced to prevent any fraud or dishonesty on the part of drawer of negotiable instrument act. But the objective of greater credibility to our trade, commerce, business and industry is not been achieved due to the problem of delay in disposal of cases.

The Constitution of India under Article 21 guarantees every citizen right to life and personal liberty, right to equality under article 14, right to freedom etc. rule of law states that all me

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<sup>15</sup> Government of India, Law Commission of India, Report No. 213, Fast Track Magestrial Courts for Dishonored Cheque Cases, November 2008: The Law Commission undertook this subject suo motu in view of the above circumstances and in pursuance of one of its terms of reference "to suggest suitable measures for quick redressal of citizens grievances, in the field of law". The Commission examined the subject thoroughly along with the right to speedy trial. The study indicates that there is an urgent need to ensure restoration of the credibility of the instrument/trade/business/commerce and, of course, fundamental right to speedy trial, to ensure that genuine and honest citizens/commercial community is not harassed or put to inconvenience. Hence, we recommend setting up of Fast Track Courts at Magisterial level to deal with the huge pendency of dishonoured cheque cases.

<sup>16</sup> State of Maharashtra v. Champalal Punjabi Shah AIR 1981 SC 1675.

<sup>17</sup> (2005) 7 SCC 387.

<sup>18</sup> AIR 1979 SC 1360.



are equal before law but when it comes to the governing power of country i.e. law it fails to implement this principle in judicial procedure. Judicial process being very complex, costly and time taking puts poor at a distance from practicing their right.

Article 14 guarantees equality before law and equal protection of laws and this equal protection needs to be given to the one who are suffering from such inequalities as mentioned above by providing easy access of justice to them but in courts which is considered a place where everyone is granted justice has become a spot of injustice as in courts to get justice one has to go through costly and complex procedures of litigation and it becomes difficult for a poor litigant who barely able to feed himself. Apart from all this the problem of pendency of case has made it more miserable for litigants to seek grievance and get justice through courts. For whatever reason may it be but the delay in disposal of cases and other factors have defeated the purpose and objective for which the people approach the courts for their redress.

*“justice delayed is justice denied and at the same time justice hurried is justice buried”*

Delay in disposal of cases causes hardship not only to the accused but also victim has to suffer for the same. The Preamble of the Constitution guarantees and secures every citizen social, economic and political justice, but this promise of Constitution cannot be fulfilled unless and until the three organs of the state i.e. legislature, executive and judiciary join their hands and work together for finding ways to provide every litigant easy and accessible justice.

#### **AMENDMENT IN NEGOTIABLE INSTRUMENT ACT, 1881- NEED OF HOUR**

- Since 1881 the government has come up with a number of amendments to the Negotiable Instrument Act, 1881 but still the problem with criminal offence of cheque dishonor remains the same. Seeing the current situation of pending cases and to do away with unnecessary litigation government came up with the concept of interim compensation so as to save the considerable time and resources which is been used at the time of court proceedings.
- In the present time where already the use of paper currency is getting reduced day by day, it becomes crucial for the government to redouble people's faith in such instruments.
- Also a huge pendency of cases causes loss to traders, MSME sectors and to the businessmen who have to undergo in the complex and a long procedure in case of cheque dishonor, also the pendency has increase due to the filing of large amount of

false cases, interim compensation is a kind of relief given to the drawer and drawee so as to recoup the loss suffered by party.

- The proposed amendment also adds a provision which states that if drawee already convicted by trial court will have to pay 20% of the amount of cheque as compensation awarded by trial court during conviction to the Appellate court. In case if the drawer gets acquitted during trail or in the Appellate court, the court will pass order directing complainant to return the interim compensation with interest rate, this amount has to repaid within 60 days. Both of these provisions are introduced in order to reduce false cases involving frivolous complaints. Previously procedure of filing a case being simple and less costly served as an invitation to the one who wasted the time of court by filing such cases. The introduction of such provision may also be unfavorable for the ones who can't afford to pay huge amounts and gets trapped into the judicial complexity.

<b>STATES LAG IN CLEARING CASES</b>			
<b>STRUGGLERS IN REDUCING 10-YR-OLD PENDING CASES</b>			
States	10-yr-old cases	All pending cases	% of cases pending*
All India	22,76,598	2,54,85,476	8.93%
Gujarat	3,49,077	17,58,423	19.85%
Odisha	1,72,629	10,05,675	17.17%
Bihar	2,50,235	15,49,110	16.15%
UP	7,75,140	59,94,548	12.93%
W Bengal	2,03,213	16,23,882	12.51%
J&K	9,005	81,939	10.99%

\*For 10 yrs; Notes: The details of pending cases in all district and subordinate courts, other than high courts and the Supreme Court, are as on September 4, 2017  
Source: National Judicial Data Grid

As one can see in the above data India is facing a lot of problem in reducing the continuously increasing pendency of cases. the proposed amendment is a step towards reducing this problem and to give every citizen of India their constitutional right of speedy disposal.

**FIXING THE INTERIM COMPENSATION, PRACTICALLY APPLICABLE OR NOT?**

Interim compensation of 20% as proposed is not justifiable as if seen practically the amount of cheque being dishonored varies from case to case, it may be 50,00,00,000 in a case and 50,000 in other one. So the point which needs to be discussed is whether the decision of

fixing the interim compensation will be practically applicable and will it fulfill the objective of the amendment and solve the problem of delayed disposal.

The percentage of compensation needs to be fixed according to the amount of cheque which is dishonored, if the amount of cheque is above 1 crore then the amount of compensation can be fixed as 2%-5% and if the amount of cheque is in lakhs then the compensation percentage can be set as 7% - 10%, in case if the amount is below 1 lakh then the compensation granted can be till 20%. By this one can conclude that there needs to be a certain criteria for the percentage of interim compensation to be fixed, this percentage can't be generalized it needs to be set accordingly.

Also another point which needs to be dealt is that of compensation which is being paid back by the complainant with an interest rate in case of false case, this amount of compensation being paid by complainant needs to be increased so as to reduce the false cases. The amount of compensation to be paid by defaulter needs to be doubled of the amount of compensation being paid by drawer in order to make the defaulters stop this illegal practice and to save court's precious resources and time.

### **CONCLUSION**

Every law needs some modification so as to cope up with the developing society and so as to head towards the objective of making society free from crime. Devising amendments in law from time to time are certain steps taken by legislature to make society more developed whether it be the amendment made by the legislature in case of Nirbhaya or be it in constitution law, company law and other amendments made by legislature in earlier times. All of these amendments produced brought a change in the working system of society whether it be a massive or minor one. Amendment to laws are made due to cases which judiciary deals with on day to day basis and the required need of change in law so as to make the society more developed.

The Negotiable Instrument Act was enacted to ensure the credibility of trade, commerce and business and the amendment proposed is to restore this credibility which has been lost due to certain factors like delayed disposal in cases related to cheque dishonor.

Same is the case with the negotiable instrument act in which a bill has been introduced for amendment by observing the cases arising on day to day basis related to cheque dishonor. The said act has been amended so as to edify the negotiable instrument act and to achieve its objective for which the act was formed.

The Constitution guarantees every litigant a fair and speedy trial under Article 21. Any delay in the judicial proceedings of court is an infringement of the rights of a citizen and can also result in grave miscarriage of justice.

Judiciary which is one of the vital organs has a special role to play in the task of achieving socio- economic goals and for that it needs to be aware of the social and economical changes around the nation for achieving the goal of socio economic justice for the people.

The Indian Judicial system has to face challenges on day to day basis whether it be the matter of disposal of cases or the constant challenge of developing law in accordance with the changing time and society. So as to survive in this challenging world, the need of hour is that judiciary needs to make the entire judicial machinery more accessible to litigants by utilizing all the available resources at their maximum level so as to improve the service to the public and also this may solve the problem of delays in disposal, making courts more efficient and less daunting and easily approachable by every section of the society.