

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIAL TEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **THE NEGOTIABLE INSTRUMENTS ACT, 1881** **WITH RECENT AMENDMENTS**

AUTHORED BY - SUBODH KUMAR SARKAR

LLM-II, (4th semester) Roll No- 24

Progressive Education Society's Modern Law College, Pune

## **Abstract:**

Negotiable Instruments Act, 1881 is an act in India dating from the British colonial rule, that is still in force with significant amendments recently. It deals with the law governing the usage of Negotiable Instrument in India. The word "negotiable" means transferable and an Instrument is a document giving legal effect by the virtue of the law. The most important class of Credit Instruments that evolved in India were termed Hundi. Their use was most widespread in the twelfth century and has continued till today. In a sense, they represent the oldest surviving form of credit instrument. These were used in trade and credit transactions; they were used as remittance instruments for the purpose of transfer of funds from one place to another. In Modern era Hundi served as Traveller cheque. The **Negotiable Instruments Act, 1881** is a legislation enacted in India that governs the usage and regulation of negotiable instruments such as promissory notes, bills of exchange, and cheques. This law defines the characteristics of these instruments, specifies the rules for their creation, transfer, and payment, and provides legal remedies in cases of dishonour. Here's a detailed explanation:

According to Section 13 of the Negotiable Instruments Act, A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer. Of late Negotiable Instrument Act has become one of the most important branches of law. This is because of inclusion penal provision of the Act so as to stop dishonour of cheques at the sweet will of the drawers The amending Act of 2018 has made drastic changes in this regards To review and review In June 2020, the Finance Ministry in the Government of India proposed the decriminalisation of a number of white-collar crimes, including cheque bouncing under Section 138 of the Negotiable Instruments Act, in order to improve the ease of doing business as well as to reduce imprisonment rates.<sup>1</sup> The proposal has been opposed by a number of trade

---

<sup>1</sup> Union Finance Ministry Proposes to Decriminalisation host minor offence under 19 legislation. The Hindu. PTI. 10 June 2020.ISSN\_0971\_751X. Retrieved 22 July 2020.s

and business associations, including the Confederation of all India Traders (CAIT),<sup>1</sup> the India's Bank association (IBA)<sup>S</sup> and Finance Industry Development Council (FIDC), and the Federation of Industrial and Commercial Organisation (FICO). Types of negotiable instruments recognised and governed by the Act i) Promissory Note ii) Bill of Exchange and Cheque. The provision regarding interim compensation for a Cheque bounce case under Section 138 of NI Act Section 143A of the Negotiable Instruments Act, 1881 was inserted in 2018 to address the issue of delayed resolution of cheque dishonour cases. The court's discretion in applying Section 143A is based on several factors, including: The merits of the complainant's case, The merits of the accused's defence, and The accused's financial distress. The interim compensation is payable within 60 days of the order, or within a further period of up to 30 days if the drawer of the cheque shows sufficient cause. The compensation can be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973. How to get Interim Compensation under Section 143A of NI Act? <sup>12</sup> Oct 2024 — Section 143A of Negotiable Instruments Act, 1881

### **INTRODUCTION and History.**

The history of the present Act is a long one. The Act was originally drafted in 1866 by the 3rd Indian Law Commission and introduced in December 1867 in the council and it was referred to a Select Committee. Objections were raised by the mercantile community to the numerous deviations from the English Law in which it contained. The Bill had to be redrafted in 1877. After the lapse of a sufficient period for criticism by the Local Governments, the High Courts and the chambers of commerce, the Bill was revised by a Select Committee. In spite of this Bill could not reach the final stage. In 1880 by the Order of the Secretary of State, the Bill had to be referred to a New Law Commission. 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 (Act No.26 of 1881).<sup>[1]</sup>

The most important class of Credit Instruments that evolved in India were termed Hundi. Their use was most widespread in the twelfth century and has continued till today. In a sense, they represent the oldest surviving form of credit instrument. These were used in trade and credit transactions; they were used as remittance instruments for the purpose of transfer of funds from one place to another. In Modern era Hundi served as Traveller cheque.

According to Section 13 of the Negotiable Instruments Act, "A *negotiable instrument* means a promissory note, bill of exchange or cheque payable either to order or to bearer."<sup>[3]</sup> But in Section 1, it is also described the Local extent, Saving of usage relating to hundis, etc. and Commencement. It extends to the whole of India but nothing herein contained affects the Indian Paper currency 1871, Section 21, or affects any local usage relating to any instrument in an oriental language. Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come.

#### **Main Types of Negotiable Instrument are:**

1. Inland Instruments
2. Foreign Instruments
3. Bank
4. Finance Companies (listed) Draft

Types of negotiable instruments recognised and governed by the Act 1881. Promissory note  
Bill of Exchange Cheque.

The legal definition of negotiable is that anything can be transferable from one party to a different party with the help of delivery so that the title can pass with or without the seal of approval to the transferee. The law concerning negotiable instruments is the law of the industrial world which was practised to facilitate the activities in trade and commerce, creating provision or giving holiness to the instruments of credit that can be deemed to be convertible into cash and easily transferable from one person to another. In the absence of these instruments, trade, and commerce activities were likely to be negatively affected. It was not practicable for the traders to carry the huge amount of currency in force. The supply of Indian law relating to such instruments is avowedly the English Common Law. The significant objective of the Act is to legitimise the system by which instruments contemplated by it could pass from one person to another by negotiation like any other goods. The Law in India concerning negotiable instruments is contained in the Negotiable Instruments Act, 1881. This Act is made to define and change the law relating to Promissory Notes, Bills of Exchange, and Cheques. The Act applies to the whole of India. However, nothing herein contained affects the RBI (RESERVE BANK OF INDIA) Act, 1934, or affects any usage of any instrument in an oriental language. Some usages may be excluded by any words in the body of the instrument that indicates an intention that the legitimate relations of the parties thereto shall be ruled or governed by this

Act, and it shall come into force on the 1st of March 1882. The provisions of this Act apply to Hundis unless there is neighbourhood: Multiple native instruments like Treasury Bills, Bearer debentures, etc., are also negotiable instruments either by mercantile custom or under different enactments.

The Negotiable Instruments Act, 1881, is a corner stone of India's financial legal framework, governing instruments like promissory notes, bills of exchange, and cheques. Enacted to facilitate the smooth functioning of financial transactions, it ensures the legality and credibility of negotiable instruments in the Indian economy. The Act was enacted on 9th December 1881 and came into effect on 1st March 1882. Its primary aim was to consolidate the laws relating to negotiable instruments, providing clarity and uniformity for their usage in trade and commerce. Of late Negotiable Instruments Act has become of the most important branches of law. This is because of inclusion of penal provisions in the Act so as to stop dishonour of cheques at the sweet will of the drawers. The Amending Act of 2018 has made drastic changes in this regard<sup>2</sup>. Section 143A provides relief during the trial, while Section 148 applies during the appeal stage. The court's discretion in applying Section 143A is based on several factors, including: The merits of the complainant's case, The merits of the accused's defence, and The accused's financial distress. The interim compensation is payable within 60 days of the order, or within a further period of up to 30 days if the drawer of the cheque shows sufficient cause. The compensation can be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973. 12 Oct 2024 — Section 143A of Negotiable Instruments Act, 1881 The provision regarding interim compensation for a Cheque bounce case under Section 138 of NI Act Section 143A provides relief during the trial, while Section 148 applies during the appeal stage.

## Chapter-I

### **Object and the purpose. –**

The object and the purpose of the Act is to legalise the system under which claims upon certain mercantile instruments are treated like ordinary goods passing from hand to hand-Sivaram v Jayaram AIR 1966 Mad -297. Even before passing of the Act the Indian Courts applied the law merchant of England relating to negotiable instruments where the bill was in English form even though the parties were Hindus. But as the Indian Courts hesitated to extend the principle of

---

<sup>2</sup> Negotiable instruments Act 1881 edited by TN Shukla Advocate 2023 Kamal Law Publications Kolkata

the law merchant to transactions of the nature of the banking which takes place in the mofussil area, this Act was passed in 1881. But the English law on the subject has been faithfully reproduced in the provision of the Act. However, some modifications and departure have been made owing to the exigencies of the situation in this country<sup>3</sup>. In construing the Act it will not be proper for the Court to find out what the law Marchant had been before act was enacted. Every effort should be made to interpret the provision of the Act so as to achieve and prompt the object of the Act—Brojolar Vs Budhnath -55Cal- 551.AIR 1928

### Case Law:

#### **Brojo Lal Saha Banikya vs Budh Nath-Pyari Lal Das on 13 July, 1927 Equivalent citations: AIR1928CAL148, AIR 1928 CALCUTTA 148**

This appeal arises out of a suit brought against the defendant by the firm in the name and style of Budh Nath PEARL Lal Das for recovery of Rs. 21,562 2-0 alleged to have been lent to the defendant for which a promissory note was given by the defendant in favour of Pyari Lal Pas, dated 21st January 1921. The learned advocate for the appellant raises two points in his appeal : the first is that the plaintiff firm was incompetent to maintain the suit, having regard to the provisions of [Section 78](#), Negotiable Instruments Act, 1881, read with Section -8of Act. Secondly, if the suit is considered to be base upon the consideration paid to the defendant, the suit is barred, having been brought more than three years after the time when the loan was advanced. Under the promissory note the loan was payable to Pyari Lal Das or to his order after thirty days from the date of its. execution. The present suit was brought on the 16th February 1924. If the suit is considered to have been brought on the promissory note it is within time. But it is contended, on behalf of the appellant, that, if the suit is considered to have been brought for the original consideration, then it is barred by limitation. It is further urged on behalf of the appellant that, on a true reading of the plaint it must be held that the plaintiff did not bring the suit upon the original consideration, but based his claim only upon the promissory note. The defendant raised various pleas in his defence, but the question with which we are mainly concerned in this appeal is whether the suit has been properly brought by the plaintiff firm.

This is one of the oldest case Law cited on enactment in the Negotiable Instrument Act in India.

---

<sup>3</sup> Negotiable instruments Act1881 edited by TN Shukla Advocate 2023 Kamal Law Publications Kolkata page -1

## CHAPTER II

### **Meaning and Important Sections of Negotiable Instrument Act**

A Negotiable Instrument is a document freely transferable by trade customs from one person to another by delivery or by endorsement. The property in such a document was transferred to a Bonafide transferee for value. The Act does not define the term 'Negotiable Instruments' but section 13 of the Act provides for only some kinds of negotiable instruments, i.e., promissory notes and cheques, bills of exchange, which are payable either to order or bearer. THE NEGOTIABLE INSTRUMENTS ACT, 1881 ACT NO. 26 OF 1881 [9th December, 1881.] An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. Preamble. —Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows: —

#### ***PROMISSORY NOTE***

According to section 4 of the NI Act, 1881, A promissory note is a negotiable instrument in writing and is not a banknote or a currency note. The person who has to pay is called the Maker. He is the debtor, and he shall sign on the instrument. The person willing to collect the money is called Payee or the creditor<sup>4</sup>.

Illustrations A Signs instruments in the following terms: (a) "I promise to pay B or order Rs. 500." (b) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received." (c) "Mr. B, I O U Rs. 1,000." (d) "I promise to Pay B Rs. 500 and all other sums which shall be due to him." (e) "I promise to Pay B Rs. 500, first deducting thereout any money which he may owe me." (f) "I promise to Pay B Rs. 500 seven days after my marriage with C." (g) "I, promise to Pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum

#### ***BILLS OF EXCHANGE***

According to section 5 of the NI Act, 1881, A bill of exchange is an instrument that has an unconditional order directly signed by the Maker, directing a certain person to pay a certain sum of money only to, or to the order of, a specific person or the owner of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified even which, according to the

---

<sup>4</sup> Professional's Bare Act book publisher Delhi page no2

ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain. The sum payable may be “certain”, within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due. The person to whom it is clear that the direction is given or that payment is to be made may be a “certain person”, within the meaning of this section and section 4, although he is mis-named or designated by description only.

### **Cheque**

According to section 6 of the NI Act, 1881, A cheque is a bill of exchange on a selected banker and not expressed to be payable other than on-demand, and it contains a cheque in the electronic form or the electronic image of a cheque.

Explanation I.—For the purposes of this section, the expressions— 2[(a) “a cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;] (b) “a truncated cheque” means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing. Explanation II.— For the purposes of this section, the expression “clearing house” means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India<sup>5</sup>.]

Let us have a look at the purpose of the Negotiable Instrument Act.

This Act aims to create legitimate provisions for the negotiable instruments system currently in operation in the whole country. The regulatory laws would systematically organise the system, and the Act would define a decisive authority to decide any issues relating to negotiable instruments. The Act defines every topic concerned to the negotiable instruments for better vision and understanding. The Act provides the penal provisions for effectively implementing the negotiable instruments process between two parties. If any party breaches its obligation or there is nonfulfillment of the said duty, it may be charged with offences leading to

---

<sup>5</sup> Professional’s Bare Act book publisher Delhi page no2

imprisonment. It protects the right of the parties when they discharge their obligations diligently. It mentions different conditions about the transaction systems and lays down its specific provisions. The Act discards all types of discrepancies or hurdles between the parties. In case of disputes, the parties must undergo the established provisions and legally resolve the matter.

7. “Drawer” “Drawee”.—The maker of a bill of exchange or cheque is called the “drawer”; the person thereby directed to pay is called the “drawee”. “Drawee in case of need”.— When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a “drawee in case of need.” “Acceptor”.— After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”. “Acceptor for honour”.— 4[When a bill of exchange has been noted or protested for non-acceptance acceptance or for better security,] and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.<sup>6</sup>

8. “Holder”.—The “holder” of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. “Holder in due course”.—“Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if 1[payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. “Payment in due course”.—“Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. Inland instrument.—A promissory note, bill of exchange or cheque drawn or made in 2[India] and made payable in, or drawn upon any person resident in, 2[India] shall be deemed to be an inland instrument.

---

<sup>6</sup> Professional’s Bare Act book publisher Delhi page no3

12. Foreign instrument. —Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

13. “Negotiable instrument”.—3[(1) A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer. Explanation (i)—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. Explanation (ii)—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank. Explanation (iii)—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.] 4[(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

14. Negotiation.—When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. Indorsement.—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the “indorser”. 16. Indorsement “in blank” and “in full”.—5[(1)] If the indorser signs his name only, the indorsement is said to be “in blank,” and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full.”

### **Chapter -III**

#### **OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS**

Section- 138. Dishonour of cheque for insufficiency, etc., of funds in the account<sup>7</sup>.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount

---

<sup>7</sup> Professional’s Bare Act book publisher Delhi page no28

of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless— (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

140. Defence which may not be allowed in any prosecution under section 138.—It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

141. Offences by companies.<sup>8</sup>—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: 6 [Provided further that where a person is nominated as a Director of a company by virtue of

---

<sup>8</sup> Professional’s Bare Act book publisher Delhi page no14

his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.] (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section, — (a) “company” means anybody corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.

142. Cognizance of offences.—1[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: 2 [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;] (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]. 3[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,— (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.] 4 [142A. Validation for transfer of pending cases.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015),

shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times. (2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.] (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section, — (a) “company” means anybody corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm. 142. Cognizance of offences<sup>9</sup>.—1[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: 2 [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;] (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]. 3[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,— (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in

---

<sup>9</sup> Professional's Bare Act book publisher Delhi page no30

due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.] 4 [142A. Validation for transfer of pending cases.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times. (2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective.

Chapter corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.] (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section, — (a) “company” means anybody corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm. 142. Cognizance of offences.—1[(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: 2 [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;] (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]. 3[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,— (a) if the cheque is

delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.] 4 [142A. Validation for transfer of pending cases.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times. (2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective .

## Chapter-IV

### Interim Compensation:

The said amount of interim compensation may be recovered in the manner provided under section 421 of CrPC i.e., Section 463 of the Bhartiya Nagarik Suraksha Sanhita, 2023 – by way of attachment and sale of any movable property of the drawer, or a warrant to the Collector of the concerned district to recover the same as arrears of land revenue from the movable or immovable property of the drawer.

b) Insertion of a new section 148<sup>10</sup> related to Deposit in case of appeal:

The insertion of Section 148 in the Act of 1881 whereunder, in an appeal by the drawer against conviction under Section 138, the Appellate court is empowered to order the appellant to deposit such sum which shall be a minimum of 20 per cent of the fine or compensation awarded by the trial court. The amount so payable shall be in addition to any interim compensation paid

---

<sup>10</sup> Professional's Bare Act book publisher Delhi page no33

by the Appellant under Section 143A. Also, the same has to be deposited within a period of 60 days from the date of order or within such further period not exceeding 30 days or may be directed by the Court on sufficient reasons being shown by the Appellant.

c) Returning the interim compensation/deposit:

In case the drawer is acquitted (during trial or by the Appellate court), the court will direct the complainant to return the interim compensation (or deposit in case of an appeal case), along with an interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year. This amount will be repaid within 60 days of the court's order, or within such further period not exceeding 30 days as may be directed by Court on sufficient grounds shown by the complainant

The court's discretion in applying Section[143. Power of Court to try cases summarily.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials: Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code. (2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing. (3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint. 2

[143A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant— (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and (b) in any other case, upon framing of charge. (2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque. (3) The interim compensation

shall be paid within sixty days from the date of the order under subsection (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque. (4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

#### **Amendment:**

143A is based on several factors, including: The merits of the complainant's case, The merits of the accused's defense, and the accused's financial distress. The interim compensation is payable within 60 days of the order, or within a further period of up to 30 days if the drawer of the cheque shows sufficient cause. The compensation can be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973. How to get Interim Compensation under Section 143A of NI Act? 12 Oct 2024 — Section 143A of Negotiable Instruments Act, 1881 The provision regarding interim compensation for a Cheque bounce case under Section 138 of NI Act Section 143A of the Negotiable Instruments Act, 1881 was inserted in 2018 to address the issue of delayed resolution of cheque dishonour cases.

#### **Purpose**

To provide interim compensation to the complainant during the trial of a cheque dishonour case  
When it applies .Applies to cases where the offense was committed after September 1, 2018  
How it works .The court can direct the accused to pay interim compensation to the complainant, up to 20% of the cheque amount  
When it can be applied.The court can apply this section at any time, even before recording evidence

#### **How it's different from Section 148**

Section 143A provides <sup>11</sup>relief during the trial, while Section 148 applies during the appeal stage  
The court's discretion in applying Section 143A is based on several factors, including: The merits of the complainant's case, The merits of the accused's defense, and The accused's financial distress.

---

<sup>11</sup> Professional's Bare Act book publisher Delhi page no32

The interim compensation is payable within 60 days of the order, or within a further period of up to 30 days if the drawer of the cheque shows sufficient cause. The compensation can be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

How to get Interim Compensation under Section 143A of NI Act?

12 Oct 2024 — Section 143A of Negotiable Instruments Act, 1881 The provision regarding interim compensation for a Cheque bounce case under Section 138 of NI Act was.

## Chapter-V

### How to get Interim Compensation under Section 143A of NI Act?

A mere cheque bounce can attract criminal proceedings as under Section 138 of the Negotiable Instruments Act, 1881. The person in whose favour the cheque was drawn files a complaint against the person who drew the cheque but the payment did not succeed as provided under Section 138 of NI Act. There is a provision under Section 143A of NI Act to provide financial relief to the complainant even before the matter is decided. A complainant can get interim compensation under Section 143A of NI Act, and the accompanying rules which lay the path for interim relief to the complainant in a cheque bounce matter.

Amended Cheque Bounce Provisions- 143A & 148...what is it?

Section 143A- It empowers the Court to order the drawer of the cheque to pay Interim Compensation - 20% - Without depositing this amount the accused cannot defend the case.

Section 148 – It empowers the Appellate Court to order payment pending the appeal against conviction

The Appellate Court may order the appellant to deposit an amount which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.

This amount shall be in addition to the amount already paid by the appellant under Section 143A. It received the assent of the President and was notified in the Official Gazette on 02.08.2018 Insertion of a new section 148<sup>12</sup> related to Deposit in case of appeal

The Amendment Bill inserts a new Section 143 (A) in the NIA Act of 1881 to provide that the court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where the drawer pleads

---

<sup>12</sup> Kamal's N I ACT, 1881 edited by T N Sukla published by Kamal Law House Kolkata page no-91

not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding 20 per cent of the amount of the cheque. The said interim compensation has to be paid within a period of 60 days from the date on which the order to that effect is made. The interim compensation so recovered shall be deductible from the amount of fine imposed under Section 138 by the Magistrate upon conviction of the drawer or any compensation directed to be paid under section 357 of the Code of Criminal Procedure (CrPC), 1973 (Section 395 of BNSS, 2023). Section 138 of the Act of 1881 provides for imposition of a sentence of imprisonment not exceeding a period of 2 years or fine extending to twice the amount of the dishonoured cheque or both.

The said amount of interim compensation may be recovered in the manner provided under section 421 of CrPC i.e., Section 463 of the Bhartiya Nagarik Suraksha Sanhita, 2023 – by way of attachment and sale of any movable property of the drawer, or a warrant to the Collector of the concerned district to recover the same as arrears of land revenue from the movable or immovable property of the drawer.

b) Insertion of a new section 148 related to Deposit in case of appeal:

the insertion of Section 148 in the Act of 1881 whereunder, in an appeal<sup>13</sup> by the drawer against conviction under Section 138, the Appellate court is empowered to order the appellant to deposit such sum which shall be a minimum of 20 per cent of the fine or compensation awarded by the trial court. The amount so payable shall be in addition to any interim compensation paid by the Appellant under Section 143A. Also, the same has to be deposited within a period of 60 days from the date of order or within such further period not exceeding 30 days or may be directed by the Court on sufficient reasons being shown by the Appellant.

c) Returning the interim compensation/deposit:

In case the drawer is acquitted (during trial or by the Appellate court), the court will direct the complainant to return the interim compensation (or deposit in case of an appeal case), along with an interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year. This amount will be repaid within 60 days of the court's order, or within such further period not exceeding 30 days as may be directed by Court on sufficient grounds shown by the complainant

---

<sup>13</sup> Kamal's N I ACT, 1881 edited by T N Sukla published bny Kamal Law House Kolkata page no-91

### **Conclusion:**

This Act is a keystone in economic and finance-related matters. It is a warning for all the persons who would face any wrongs concerning monetary dealings if mentioned in the Act. After getting a few aspects of the provisions, it is doubtless that the country's law is highly stringent towards any kind of discrepancies or any voluntary wrong committed by the people. Of late Negotiable Instruments Act has become one of the most important branches of law. This is because of inclusion of penal provisions in the Act so as to stop dishonour of cheques at the sweet will of the drawers. The Amendment Act 2018 has made some drastic changes in this regard. The Court trying an offence under section 138 may order the drawer of the cheque to interim compensation. The interim compensation under sub-section(1) shall not exceed twenty percent amount of the cheque. Negotiable Instrument Act plays not only vital role but it disciplines the customer.

The Act was amended from time to time to mitigate the financial cases. The Act also helps the Indian citizens develop the ease of doing any business as there would be a decrement in case of any disputes between the two parties, and it can be solved through the legislation and some other process. Some major provisions added after the amendment are a boon for diligent people.

IJLRA