



Decongesting Bounce Cases

Cheque

A Policy Brief

Centre for Civil Society



Criminalising Cheque Bounce Cases – An Effective Remedy?

Due to the mistrust engendered by bounced cheques, cash transactions were encouraged which led to problems of counterfeiting, costs of storing and moving cash, and the law enforcement problems of an underground economy. The Negotiable Instruments Act, 1881 was amended in 1988 to include the criminalisation of bouncing cheques, following the recommendations given in the report of the committee on banking laws, headed by Dr. Rajammanar.

The time prescribed in section 138 of the Negotiable Instruments Act, 1881 for fast disposal of cases is six months, but due to the sheer number of cases in court, the minimum time a cheque bounce case takes to end is two to three years. Cases under section 138 of the Act have been identified as one of the top bottlenecks clogging the judicial system of India.

Section 138 has only been partly successful in achieving its overall purpose in that it has failed to deter cases of dishonour of cheques due to the sheer size of litigation faced by the courts, and the subsequent backlog that has been created. Dealing with such huge arrears of cheque bounce cases requires radical reforms.

International best practices

In Singapore, there is no criminal liability, and a civil liability is imposed on the defaulting party. The damages are liquidated and include amount of the bill, interest from the time of presentment of payment or maturity of the bill and expenses of noting, and protest (if protest is necessary).

France imposes civil liability on the defaulting party, and places frequent offenders on a list, banning them from issuing cheques for five years. Banks are also free to charge fees for unpaid cheques, under certain limits.

In the USA, different states have different laws, and both civil and criminal liabilities are imposed. Civil liability ranges from double to treble the original amount, and criminal liability ranges from one to ten years of imprisonment.

Recommendations

- I. Mandatory alternative dispute resolution or Arbitration: An amendment to the Negotiable Instruments Act, 1881 is being considered which decriminalises the cheque bounce offence, and makes it compulsory for parties to resolve cheque bounce disputes through alternative dispute redressal mechanisms (section 89 of the Code of Civil Procedure, 1908).



However, this can be feasible if: (a) the drawee bank offers an in-house dedicated time-bound arbitration service for this purpose; (b) the Arbitration Act is amended to limit grounds for review; (c) arbitrator should impose penal and deterrent damages for dishonour.

- II. Powers to the bank: The bank should be authorised to take the following actions against cheque dishonour due to insufficient balance:
 - a. Banning repeat offenders from issuing cheques: The French system of banning repeat offenders from issuing cheques seems like an ideal option for India to implement. Currently, if a cheque for a value of INR 1 crore or more is drawn on an account on four occasions in one financial year, and there are insufficient funds in the account, the account holder will not be issued a cheque book. This banning should not be limited to large amounts.
 - b. Proportionate penalties: The penalty imposed by banks in India is too small an amount to serve as a deterrent. An ad valorem penalty for default and a higher penalty for a subsequent default will prove to be an effective deterrent.
 - c. Freezing the bank account: Another option that can be considered is giving banks the power to freeze accounts of offenders until they have enough money to fulfil the debt of the cheque holder.

- III. Replacing cheque system with online transfer: Cheques should be replaced by electronic transfer of funds. It is a more effective way of monetary transfer, and would resolve the cheque bounce issue by eliminating cheques altogether. It is possible to replace the cheque system in a phased manner beginning with metropolitan cities.