

The Negotiable Instruments (Amendment) Bill 2015

What was the need for the amendment?

This is the third major amendment in recent times to the Negotiable Instruments Act 1881, prompted by dishonour of cheques in lakhs, shaking the credibility of the instrument, confidence of business community and choking courts. The 1988 amendment introduced penalty for issuing cheques which get dishonoured for want of fund in the bank. Since that provision, Section 138, was found insufficient to deal with the menace, the penalty was increased from one to two years imprisonment after a summary trial. Even this has not resolved the problem and at present 1.8 million criminal cases are before magistrates' courts and appellate courts. One of the devices employed by dishonest drawers is to challenge the jurisdiction of the courts, stalling the proceedings. This was tried to be resolved by the Supreme Court in its 2009 judgment in Dashrath Rupasingh case.

What does the present amendment do?

The amendment adopts the basic principles laid down by the Supreme Court in the above case regarding jurisdiction of courts and improves upon it in the light of the representations made by various stakeholders, including industry associations and financial institutions. Complications had arisen because a cheque was issued in one place on one bank, and presented in another place to another bank. The payer company might be in one corner of the country and places and even if he won, appeals would be filed in another court and arguments will continue for years. The Supreme Court found that even high courts had differed on case. The present amendment removes such legal bottlenecks and speeds up the trial. Now the question of jurisdiction cannot be raised as the law is clear.

What is the procedure laid down by the amendment?

The new provision states that the holder of the cheque can file a criminal complaint before a magistrate where he resides and tendered the cheque. He need not go to the place where the cheque was issued or other courts. After this clarification, there is a single place to file the complaint. Litigation expenses will come down, and the drawers of cheques, including company directors will be more careful while signing such cheques. The government feels that these procedural changes will be fair to both parties. What happens to cases already pending?

According to the newly introduced Section 142A, all cases which were pending in any court, whether filed before it or transferred to it shall go before the court having jurisdiction under the new procedure.

What is the other important proposed change in the Bill?

The new law also cures a deficiency in the definition of "a cheque in the electronic form". The law as it stood presumed drawing of a physical cheque and signature. With the advance in technology it needed to be updated. Therefore, it explains that " 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. The Negotiable Instruments Act borrows definitions of technical expressions from the Information Technology Act 2000.

(Business Standard)