

Report on the proposed amendment of the Negotiable instruments Act, 1881

(Act No. XXVI of 1881)

1. Amendment of the Negotiable Instrument Act, 1881 (Act No. XXVI of 1881) hereinafter referred to as the Act especially Chapter XVII was included in the two-year plan for 2010-2011 of the Law commission since it received requests from different quarters for amendment of certain provisions of said Chapter.
2. The “Chapter XVII” comprising sections 138 to 141 was substituted for “Chapter XVII” comprising sections 138 and 139” by section 2 of the Negotiable Instruments (Amendment) Act, 1994 (Act No. XIX of 1994). By such substitution, dishonor of cheques for insufficiency, etc. of funds in the accounts was made punishable by imprisonment, or with fine or with both. Earlier, said Chapter used to deal with the Notaries Public.
3. After substitution of Chapter XVII, some provisions of aforesaid sections were amended by the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000) and the Negotiable Instruments (Amendment) Act, 2006 (Act No. III of 2006). Of the material amendments brought into effect in said Chapter XVII, the words and commas “for the discharge, in whole or in part, of any debt or other liability”, which was purported to be a consideration for drawing a cheque were omitted and the word “thrice” for the word “twice” before the words ‘the amount of the cheque’ was substituted in subsection (1) of section 138 by the earlier amendment and clause (c) of section 141 was substituted for former clause (c) by the latter amendment providing, *inter alia*, for trial of the offences of section 138 by a Court of Sessions.
4. Of the problems now facing the Bar and the Bench, the delay in disposal of the cases on dishonor of cheques both before the Court of Sessions and the High Court Division and indiscriminate intervention by the High Court Division under section 561A of the Code of Criminal Procedure and the absence of any scope in the law for compromise were mooted to be responsible for accumulation of the cases in both the subordinate and the higher judiciary. According to some lawyers and jurists, the various problems in the disposal of such cases have become so acute that the very purpose of the law is now being frustrated and the business and other monetary

transactions by cheques risk unnecessary complications and litigations. Multiplicity of proceedings over a dishonored cheque is also bulging the backlog.

5. The Law Commission invited Mr. Mahbubey Alam, Attorney-General, Mr. Abdul Baset Majumder, Vice-Chairman of the Bar Council, Mr. Khandker Mahbub Hossain, President of the Supreme Court Bar Association, Dr. Kamal Hossain, Mr. A. F. Hassan Arif, Dr. M. Zahir, Mr. Rafique-ul-Haq, Mr. Mohammad Amir-ul Islam, Mr. Ajmalul Hossain Q. C., Mr. A. B. M. Nurul Islam, Mr. Mohammad Jamiruddin Sircar, Mr. Fida M. Kamal, Mr. A. F. M. Mesbahuddin, Mr. S. M. Rezaul Karim, Mr. Abdur Razaque Khan, Mr. Khan Saifur Rahman, Mr. Md. Munsurul Hoque Chowdhury, Mr. Anisul Huq, Mr. Ahsanul Karim and others to a meeting for discussion on the issues. In response, Mr. A. B. M. Nurul Islam, Mr. Abdur Razzak Khan, Mr. Ajmalul Islam Q. C and Mr. Khan Saifur Rahman amongst other came and gave their valuable comments. On the following issues, every one of them expressed their opinions.
6. Omission of the words, “for the discharge, in whole or in part, of any debt or other liability” after the words “out of that account” in subsection (1) of section 138 by the Negotiable Instruments (Amendment) Act, 2000 has served no purpose. Rather, the omission has, it is argued, made easier the invoking of the inherent jurisdiction of the High Court Division under section 561A of the Code of Criminal Procedure, 1898 to stifle a case at the earliest stage. Besides, whatever the scope of investigation was available to the court to be satisfied on the *bona fide* of drawing up a cheque for a consideration was also taken away.

Now, if no purpose was achieved over the decade after the omission of the words and in view of the presence of those words in similar laws of the neighboring countries, the Commission is of the view that those words should be restored to its original position.

7. **Cognizance and trial of the offence:** After substitution of clause (c) of section 141 in the Act by the Negotiable Instruments (Amendment) Act, 2006 empowering a Court of Sessions Judge, the disposal of cases has today become a distant possibility for the preoccupation of the Sessions Judges with civil suits and other works. Consequently, trial of such petty cases could not be disposed of even in years. Moreover, the punishment prescribed for an offence under section 138 is one year

only which is well within the normal jurisdiction of a Magistrate. A timeframe should now be provided for disposal of the case.

The Commission is therefore of the view that for disposal of such cases, previous provisions empowering a first class magistrate should be restored. And for speeding up disposal of the cases, provisions may be made for summary trial as are provided for all petty cases and within a timeframe, say, six months.

8. **Offence should be made compoundable:** As the offence arises out of dishonor of a cheque for non-payment of money, and in many occasions the parties involved could settle such disputes amicably out of court but cannot get out of the litigation for want of provisions for composition of such offence. Judges and Lawyers were also very insistent for a provision of compounding of such offence since in many cases the parties do not attend the Court after they settled their disputes out of Court.

The Commission is therefore of the view that the offence should be made compoundable.

9. **Timeline for trial:** If the cases could be disposed of in the prescribed time prescribe, there cannot be any justification for fine to the extent of thrice the amount of the cheque. Moreover, such harsh and punitive provision for fine may discourage any settlement of such disputes.
10. The Commission accordingly sends herewith a draft bill for necessary amendment of the Negotiable Instruments Act, 1881.

Prof Dr. M Shah Alam
Member

Sunil Chandra Paul
Member

Justice Md. Abdur Rashid
The Chairman