**Dishonour of Cheque – Section 138 of the Negotiable instruments Act 1881**

Cheque is an instrument that is defined in Section 6 of “The Negotiable Instruments Act, 1881” as “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise other than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form (Hereinafter The Negotiable Instruments Act, 1881 is referred to as “the Act”). Explanation I. —For the purposes of this section, the expressions—

[(a)](https://indiankanoon.org/doc/53835861/) “a cheque in the electronic form” means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards wif the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

[(b)](https://indiankanoon.org/doc/157597719/) “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 dis 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.]

**DEFINITION**

Section 7 of “The Negotiable Instruments Act, 1881” states that :

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 the bill or in any endorsement 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 honor" : [When a bill of exchange has been noted or protested for non-acceptance or for better security], and any person accepts it supra protest for honor of the drawer or of any one of the endorser, such person is called an "acceptor for honor".

"Payee" : The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

**When can a case U/S. 138 can be filed in case of dishonour** **?**

Section 138 of the Act sets out the circumstances under which a check dishonor case is filed. The components required to comply with Section 138 are as follows:

* The cheque has been presented to the bank within a period of three months.
* The check shall be returned unpaid by the bank, either because the funds are inadequate or because it exceeds the amount to be paid from that account by arrangement with the bank
* The paying person asks for the money to be paid by giving the drawer , in writing, a note 15 days after the receipt by the bank of information concerning the cheque's return as unpaid.
* Within 15 days of receiving the Notice, the drawer fails to pay the payee.

**Procedure to be followed with regard to Sec 138 of the Act**

* A legal notice shall be given by registered post with all relevant facts to the drawer within 15 days of dishonor.
* The drawer is given a deadline of 15 days to make the payment if the payment is made then the matter is settled.
* If payment is not made, the claimant shall file a criminal case under Section 138 of the Act before the court concerned within 30 days of the expiry from the 15th day of the notice given.
* The complainant or his authorised agent should appear in the witness box and provide relevant information for prosecuting the lawsuit. If the court is convinced and considers validity in the complaint, then summons will be given to the accused to appear before the court.
* If the accused refrains from appearing after the summons has been served, the court may issue a bailable warrant. Even after that, if the drawer does not appear, a non-bailable warrant may be issued.
* Upon appearance of the drawer / accused, a bail bond may be furnished to ensure that it appears during the trial. After which the plea of the accused is recorded. In the event that he pleads guilty, the court shall lay down the matter for punishment. If the accused denies the charges, he will be served with a copy of the complaint.
* The complainant that, by way of an affidavit, present his evidence and produce all documents, including the original, in support of his complaint. The plaintiff will be cross-examined by the accused or his lawyers.
* The accused will be given the opportunity to show his evidence. The complainant will also be given the opportunity to show his records in support of his case, as well as the witnesses in support of his case. The accused and his witnesses will be cross-examined by the complainant.
* The final stage of the trial is the date of the arguments on which the judgment is handed down by the judge. If the accused is acquitted, the case will be brought to an end, but the complainant may continue to appeal to the High Court, in the same way if the accused is convicted, he may bring an appeal to the Sessions Court.

# In Dayawati vs Yogesh Kumar Gosain, 243(2017) Delhi Law Times 117( DB)

The Delhi High Court took into account the question whether an offense under Section 138, which is a criminally compoundable case, could be dealt by mediation, wherein the Court held that although the express statutory provision allowing the criminal court to refer the complainant and the accused to alternative dispute redress mechanisms was not specific, the Code of Criminal Procedure(' Cr. P.C.') allows and recognizes settlement without stipulating or limiting the process by which it can be reached. There is therefore no bar to the use of alternative conflict procedures, including arbitration, mediation, conciliation (recognized under Section 89 of the Civil Procedure Code, 19083) for the purposes of resolution of conflicts which are the subject matter of the offenses covered by Section 320 of the Cr. P.C. It also claimed that the proceedings under Section 138 of the the Act are different from other criminal cases and are in the nature of a civil misdemeanor where it has been given criminal overtones.

**Amendment in The Negotiable Instruments (Amendment) Act, 2018**

As pet this amendment, on the occurrence of an offence of check bouncing, the court can direct the drawer to pay interim compensation not exceeding 20% of the check amount to the complainant within 60 days from the order of the court to pay such compensation. This intermediate fee may be charged either in a summary trial or in a summons case where the clerk pleads not guilty to the prosecution of the in the complaint, or in any other case in the case of an indictment.Further, the provision further empowers the Appellate Court to hear appeals against a conviction under s. 138, to order the claimant to pay at least 20% of the value of the fine / compensation given, in addition to the interim compensation.