WHAT STEPS OF ACTION TO BE TAKEN UNDER LAW FOR DISHONOUR OF CHEQUES BEFORE CRIMINAL COURT AND ALSO FOR RECOVERY OF AMOUNT? BY

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*The dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both*

Cheques are used in almost all transactions such as re-payment of loan, payment of salary, bills, fees, etc. A vast majority of cheques are processed and cleared by banks on daily basis. Cheques are issued for the reason of securing proof of payment. Nevertheless, cheques remain a reliable method of payment for many people. On the other hand, it is always advisable to issue crossed “Account Payee Only” cheques in order to avoid its misuse.   
 A cheque is a negotiable instrument. Crossed and account payee cheques are not negotiable by any person other than the payee. The cheques have to be deposited into the payee's bank account.  
 Legally, the author of the cheque is called ‘drawer’, the person in whose favour, the cheque is drawn is called ‘payee’, and the bank who is directed to pay the amount is known as ‘drawee’.  
 However, cases of cheque bounce are common these days. Sometimes cheques bearing large amounts remain unpaid and are returned by the bank on which they are drawn.  
 The below article provides information on what you may do if your cheque is dishonoured? Here’s a step-by-step guide to the legal procedure that is available to you.

**If a cheque is dishonoured**

When a cheque is dishonoured, the drawee bank immediately issues a ‘Cheque Return Memo’ to the banker of the payee mentioning the reason for non-payment. The payee’s banker then gives the dishonoured cheque and the memo to the payee. The holder or payee can resubmit the cheque within three months of the date on it, if he believes it will be honoured the second time. However, if the cheque issuer fails to make a payment, then the payee has the right to prosecute the drawer legally

**Offence of Cheque Bouncing – Essential Ingredients**

Bouncing of a cheque invites criminal prosecution under section 138 of NI Act.

Punishment for the offence under section 138 of NI Act is imprisonment up to two

years or fine which may extend to twice the cheque amount or both. The offence is

bailable, compoundable and non-cognizable.

Essential ingredients of an offence under the section can be summed up as follows:

1. A person must have drawn a cheque on a bank account maintained by him.

2. The cheque should have been issued in discharge, in whole or in part, of any debt or other liability.

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3. The cheque has been presented to the bank within the period of its validity (3months from the date of the cheque).

4. The cheque is returned by the bank unpaid, either because of funds

insufficient or it exceeds the amount arranged to be paid.

5. The payee makes a demand for the payment by giving a notice in writing,

within 30 days of the receipt of information by him from the bank.

6. The drawer fails to make payment of the said amount of money within 15 days

of the receipt of the said notice.

7. Complaint is made within one month of the date on which the cause-of-actionarises.

The following exception is notable: When action is not taken against first dishonor and cheque is presented twice and complaint is filed against second dishonor, complaint is maintainable. However, the prosecution is only for the last time the cheque bounced and there cannot be multiple prosecutions for various times the cheque is returned.

**The following special points need to be also considered:**

\_ An offence in terms of section 138 is committed even if the cheque is returned on the ground of “closure of the account”.

\_ Return of cheque unpaid with the advice “account operation jointly, other Director’s signature required”, amounts to dishonor of the cheque within themeaning of sec. 138.

\_ A cheque is issued on an account which is a joint account of two individuals (say A and B). A has signed the cheque which bounces. B has not signed the cheque. Action can be taken under section 138 only against A and not againstB.\_In case a cheque is returned with the comments “Refer to drawer” it will be a matter of evidence to prove that the drawer had sufficient funds at the time of return of cheque and that the bank returned the cheque for some reason other than lack of funds.

If a cheque is returned due to its payment being stopped by the drawer, it will be necessary to prove that the drawer had sufficient funds in his account at the time of return of cheque and the stoppage was for some other justifiable reason (Discussed in more detail below).

\_ Absence of Mens rea (criminal intent) is not a permissible defense in bouncing of cheque.

The key issue for proceeding under IPC as against the NI Act will be mens rea (criminal intent). A person can be guilty of offence under the NI Act without any criminal intentions, while it is necessary to prove criminal intention to convict someone under IPC. Punishment under IPC is much higher than under the NI Act. A criminal cannot be allowed to take the benefit of lower punishment by choosing to push prosecution under one law. Hence, it seems reasonable to allow both proceedings (under the NI Act and IPC) simultaneously. However, it must be stressed that in case there is no mensrea, it will not be possible to prosecute under IPC.