BANKING LAWS SERVICES & CHEQUE BOUNCE MATTERS

BY

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(LAUNCH: 1.02.2018),

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 **Banking in India**, in the modern sense, originated in the last decades of the 18th century. Among the first banks were the *Bank of Hindustan*, which was established in 1770 and liquidated in 1832;andGeneral Bank of India, was established in 1786.

 The largest bank, and the oldest still in existence, is the (S.B.I). It originated as the Bank in June 1806. For many years the presidency banks had acted as quasi-central banks, as did their successors, until the Government of India Act was established in 1935, under the said Act. In 1960, the State Banks of India was given control of eight state-associated banks under the State Bank of India (Subsidiary Banks) Act, 1959. These are now called its nationalized.[[](https://en.wikipedia.org/wiki/Banking_in_India#cite_note-EvoSBI-6) In 1969 the few 14 major private banks, one of the big bank was State Bank of India. In 1980, 6 more private banks were nationalized.

 The Indian banking sector is broadly classified into nationalized and non-scheduled banks. The scheduled banks are those included under the 2nd Schedule of the Reserve Bank of India Act, 1934. The scheduled banks are further classified into: nationalized banks; and its associates; Rural Banks (RRBs); foreign banks; and other Indian private sector banks.[[7]](https://en.wikipedia.org/wiki/Banking_in_India#cite_note-BF:Banks-7) The term commercial banks refers to both scheduled and non-scheduled commercial banks regulated under the Government.[, 1949](https://en.wikipedia.org/wiki/Banking_Regulation_Act%2C_1949).[[10]](https://en.wikipedia.org/wiki/Banking_in_India#cite_note-BankOfficesCertainConcepts-10)

 Generally banking in India is fairly mature in terms of supply, product range and reach-even though reach in rural India and to the poor still remains a challenge. The government has developed initiatives to address this through the State Bank of India expanding its branch network and through the Reserve Bank with facilities like cooperation and exchange.

**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.

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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.

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

arises.

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 the

meaning 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 against

B.\_ 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.

SATYAMEVA JAYETHE== MERA BHARAT MAHAAN HAI=JAI HIND.