

## THE NEGOTIABLE INSTRUMENTS ACT, 1881: CRITICAL AND ANALYTICAL ANALYSIS

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### ABSTRACT

*The Negotiable Instruments Act, 1881 provides for three kinds of instruments, namely, promissory notes, bills-of-exchange and cheques; it excludes from its periphery instruments in oriental language, such as, Hundies. Section 25(5) of the Payment & Settlement Systems Act, 2007 provides that, the provisions of Chapter XVII of the Negotiable Instruments Act, 1881 shall apply to cases relating to dishonour of electronic funds transfer.*

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**Keywords:** Promissory Notes, Payment & Settlement System, FTCs, Pendency.

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### INTRODUCTION

The Negotiable Instruments Act, 1881 provides for three kinds of instruments, namely, promissory notes, bills-of-exchange and cheques; it excludes from its periphery instruments in oriental language, such as, Hundies. With the advent of technology, two other modes of payments came to be recognized, that is, NEFT (National Electronic Fund Transfer) and RTGS (Real Time Gross Settlement). The law in regards to these electronic means of transfers, that is, NEFT and RTGS, has been provided for in the Payment & Settlement Systems Act, 2007. Section 25 of the Payment & Settlement Systems Act, 2007, deals with cases relating to dishonour of electronic transfers. Section 25(5) of the Payment & Settlement Systems Act, 2007 provides that, the provisions of Chapter XVII of the Negotiable Instruments Act, 1881 shall apply to cases relating to dishonour of electronic funds transfer. The word “negotiable” means transferable from one person to another in return for consideration; however, the word “instrument” means, a written document by virtue of which a right is created in favour of some person. The Negotiable Instruments Act, 1881 came into force on 1<sup>st</sup> March, 1881, and it extends to the whole of India.

### CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

- **Transferability:** A negotiable instrument is freely transferable; that is, it is transferable any number of times till its maturity. If the instrument is ‘payable to bearer’, mere delivery is enough. However, if it is ‘payable to order’, it passes by endorsement and delivery.

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- **Independent Title:** The general principle as regards the transfer of property, that is, no one can give a better title than he himself has, is not applicable in case of negotiable instruments. If the transferor had obtained a negotiable instrument by exercising fraud, but the transferee obtains that negotiable instrument in good-faith (bona-fide) for value, then the transferee shall enjoy a good title as regards that negotiable instrument.
- **Certainty:** A negotiable instrument is a carrier without luggage. It is an essential requisite of a negotiable instrument that, it be framed in the fewest words possible, and in those words which would make the contract certain and precise. A negotiable instrument must be free from those conditions that which would materially impede its circulation. Also, a negotiable instrument must involve payment of a certain (that is, fixed or definite) sum of money (money only and nothing else).
- **Right to Sue:** Transferee (payee) of a negotiable instrument is not required to give notice of the transfer of the negotiable instrument to the party (drawer) which is liable to make/honour the payment under the negotiable instrument.
- **Presumptions:** Certain presumptions such as those contained in Section 118 and Section 119 of the Negotiable Instruments Act, 1881, apply to all negotiable instruments.

#### **PRESUMPTIONS UNDER SECTION 118 AND SECTION 119 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881**

According to the mandate of Section 101 of the Indian Evidence Act, 1872 the initial burden of proving a prima facie case in his favour is cast on the plaintiff, and when the plaintiff produces such evidence as will support a prima facie case in his favour, then the onus shifts on the defendant to produce before the court of law such evidence as will meet the case made out by the plaintiff. As the case continues to progress, the onus may shift back again on the plaintiff. Section 118 of the Negotiable Instruments Act, 1881 states that, until the contrary is proved, the following presumptions shall be made:

- **Consideration:** In case of a negotiable instrument, the complainant has to prima-facie show that he had received the negotiable instrument against consideration in good faith.
- **Date:** In case of a negotiable instrument, it is to be presumed that, the negotiable instrument was drawn on such date as is mentioned on the face of the negotiable instrument.
- **Time of Acceptance:** In case of a negotiable instrument it is to be presumed that it was accepted within a reasonable period of time after the date of its execution and before its maturity.
- **Time of Transfer:** It is to be presumed that, every transfer as regards a negotiable instrument was affected before the date of its maturity.
- **Order of Endorsements:** It is to be presumed that, the endorsements appearing upon a negotiable instrument were made in the order or sequence in which they appear thereon.
- **Stamp:** It is to be presumed that, a promissory note, bill of exchange or cheque which got lost, was duly stamped.

- **Holder in Due Course:** It is to be presumed that every holder of a negotiable instrument took the negotiable instrument in good faith and for consideration. The accused person has to prove that the holder of the negotiable instrument is not a holder in due course.

Noting should specify the following matters in the instrument:

- The fact of dishonour;
- The date of dishonour;
- The reason for such dishonour;
- The notary's charges;
- A reference to the notary's register; and
- The notary's initials.

Noting should be made by the notary within a reasonable period of time after dishonour. Protest is a formal certificate of the notary public attesting the dishonour of the bill by non-acceptance or by non-payment, as the case may be. After noting, the next step for notary is to draw a certificate of protest, which is a formal declaration on the bill or a copy thereof. Notice of protest may be given to prior parties. According to Section 102 of the Negotiable Instruments Act, 1881, when promissory notes and bills of exchange are required to be protested, notice of protest must be given instead of notice of dishonour.

#### **PROMISSORY NOTE, BILL OF EXCHANGE & CHEQUE: KEY FEATURES**

##### **Promissory Note (Section 4 of the Negotiable Instruments Act, 1881)**

- An instrument which satisfies the requirements of the definition contained in Section 4 of the Negotiable Instruments Act, 1881 must be held to be a promissory note, irrespective of, whether it is negotiable or not.  
Section 4 of the Negotiable Instruments Act, 1881: "It is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."
- It must be in writing, duly signed and properly stamped;
- There must be an undertaking or promise to pay; mere acknowledgement of indebtedness is not enough;
- It must not be conditional;
- It must contain a promise to pay money and money only;
- The parties to a promissory note, that is, the maker and the payee, must be certain;
- It is payable on demand or after a certain date;
- The sum payable must be certain.

##### **Bill-of-Exchange (Section 5 of the Negotiable Instruments Act, 1881)**

- There are three parties involved in a bill of exchange: the drawer, the drawee and the payee;
- It must be in writing, duly signed and accepted by its drawee and properly stamped;
- There must be an order to pay;

- It must be un-conditional;
- The amount and the parties must be certain.

#### **Cheque (Section 6 of the Negotiable Instruments Act, 1881)**

- There are three (3) parties involved in a cheque: the drawer, the drawee bank and the payee;
- It must be in writing and it must be signed by the drawer;
- The payee is always certain;
- It is always payable on demand;
- It must bear a date, otherwise it is invalid, and shall not be honoured by the bank;
- The amount must be specified clearly- both in figures and in words. According to Section 18 of the Negotiable Instruments Act, 1881, if the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

#### **Types of Cheques**

- **Open Cheque:** In such a cheque, it is possible to get the cash, over the counter of the bank;
- **Bearer Cheque:** It is somewhat similar to an open cheque; in case of a bearer cheque, any person holding or bearing the cheque, can be made payment of the amount mentioned in the cheque;
- **Crossed Cheque:** Generally speaking, open cheques are open to risk and it is dangerous to issue an open cheque, however, this risk can be avoided by using a crossed cheque which would only be credited into the bank account of the payee. A cheque can be crossed by drawing two parallel lines across the cheque on the left-hand side top corner of the cheque and with/without writing "Account Payee" or "Not Negotiable";
- **Order Cheque:** It is a cheque which is payable to a particular person and in such a cheque the word bearer may be cut or cancelled;
- **Electronic Cheque:** It is a cheque which contains the exact mirror image of the cheque and it is generated in a secured system, ensuring safety standards with the use of digital signatures.

### **FAST TRACK COURTS**

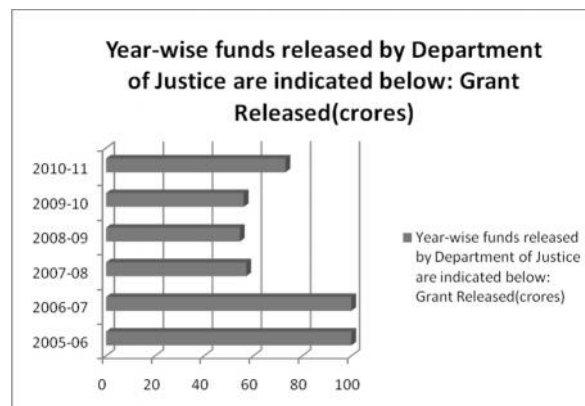
#### **Brief Note on the Scheme of Fast Track Courts**

- The Eleventh Finance Commission recommended a scheme for creation of 1734 Fast Track Courts (FTCs) in the country for disposal of long pending Sessions and other cases. The Ministry of Finance sanctioned an amount of Rs.502.90 crores as "special problem and up gradation grant" for judicial administration. The scheme was for a period of 5 years.
- The FTCs were established to expeditiously dispose of long pending → cases in the Sessions Courts and long pending cases of under trial prisoners.

- The Government accorded its approval for the continuation of 1562 Fast Track Courts that were operational as on 31.3.2005 for a further period of 5 years i.e. up to 31st March, 2010 with a provision of Rs. 509 crores. The Department of Justice is monitoring the scheme.
- The Central assistance under the above said scheme is limited to an approved norm i.e. Rs. 4.80 lakh per court per annum (recurring) and Rs. 8.60 lakh (non-recurring). Any expenditure incurred by the State in excess as recurring and /or non-recurring expenditure would have to be borne by the State Government.

**Year-wise funds released by Department of Justice are indicated below:**

Year	Grant Released (crores)
2005-06	100.00
2006-07	100.00
2007-08	57.20
2008-09	54.56
2009-10	56.13
2010-11	73.16



- As per the information received from the High Courts/State Governments, 32.34 lakh cases have been disposed off by these courts, out of 38.90 lakh transferred to these courts leaving 6.56 lakh cases pending for disposal.
- The scheme of central assistance for Fast Track Courts was extended for a period of one year i.e. upto 31.3.2011. It was decided that there will be no central funding for Fast Track Courts beyond 31-03-2011.
- Central funding was discontinued w.e.f 2011-12. However as per the judgment passed in Brij Mohan Lal case by the Hon'ble Supreme Court of India, States were given the liberty to either continue the FTC Scheme or to discontinue it as per their discretion. Further Union of India decided to allocate funds to the States on a matching basis (subject to maximum of Rs. 80.00 crore per annum) till 31.03.2015. A number of States have hence discontinued the Scheme.
- The 14th Finance Commission endorsed the proposal for setting up 1800 FTCs at a cost of Rs.4144.00 crore. It also urged the State Governments to utilize the enhanced

devolution of central taxes from 32% to 42% to fund this effort. As on 31.12.2018, 699 FTCs are functional across the country dealing cases pertaining to heinous crimes and cases related to women, children, senior citizens, disabled and litigants affected with terminal ailments etc. and Civil natured Cases pertaining to property disputes that are 5 years old.

### NEED OF FAST TRACK COURTS IN INDIA

Recently, Delhi witnessed large scale protests by various groups demanding stricter punishment and speedier trial in cases of sexual assault against women. In light of the protests, the central government has constituted a Commission (headed by Justice Verma) to suggest possible amendments in the criminal law to ensure speedier disposal of cases relating to sexual assault. Though the Supreme Court, in 1986, had recognized speedy trial to be a fundamental right, India continues to have a high number of pending cases. In 2012, the net pendency in High Courts and subordinate courts decreased by over 6 lakh cases. However, there is still a substantial backlog of cases across various courts in the country. As per the latest information given by the Ministry of Law and Justice, there are **43.2 lakh** cases pending in the High Courts and **2.69 crore** cases pending in the district courts.

After the recent gang-rape of a 23 year old girl, the Delhi High Court directed the state government to establish five Fast Track Courts (FTCs) for the expeditious adjudication of cases relating to sexual assault. According to a news report, other states such as Maharashtra and Tamil Nadu have also begun the process of establishing FTCs for rape cases. In this blog, we look at the status of pending cases in various courts in the country, the number of vacancies of judges and the status of FTCs in the country.

**Table 2: Number of Fast Track Courts and the pending cases in FTCs until March 31, 2017**

S. No	State	No of FTC	No of Cases Transferred until March 31, 2017	Pending Cases
1	Arunachal Pradesh	3	4,162	2,502
2	Bihar	179	2,39,278	80,173
3	Assam	20	72,191	16,380
4	West Bengal	109	1,46,083	32,180
5	Goa	5	5,096	1,079
6	Punjab	15	58,570	12,223
7	Jharkhand	38	1,10,027	22,238
8	Gujarat	61	5,37,636	1,03,340
9	Chhattisgarh	25	9,4670	18,095
10	Meghalaya	3	1,031	188
11	Rajasthan	83	1,49,447	26,423
12	Himachal Pradesh	9	40,126	6,699
13	Karnataka	87	2,18,402	34,335
14	Andhra Pradesh	108	2,36,928	36,975
15	Nagaland	2	845	129
16	Kerala	38	1,09,160	13,793
17	Mizoram	3	18,68	233
18	Haryana	6	38,359	4,769
19	Madhya Pradesh	84	3,60,602	43,239
20	UP	153	4,64,775	53,117

21	Maharashtra	51	4,23,518	41,899
22	Tamil Nadu	49	4,11,957	40,621
23	Uttarakhand	20	98,797	9006
24	Orissa	35	66,199	5,758
25	Manipur	2	3,059	198
26	Tripura	3	5,812	221
	<b>Total</b>	<b>1192</b>	<b>3898598</b>	<b>6,05,813</b>

Sources: Lok Sabha Unstarred Question No.498, March 3, 2012; PRS

### VACANCIES IN THE HIGH COURTS AND THE SUBORDINATE COURTS

One of the reasons for the long delay in the disposal of cases is the high number of vacancies in position for judges in the High Courts and the District Courts of the country. As of December 1, 2012, the working strength of the High Court judges was 613 as against the sanctioned strength of 895 judges. This reflects a 32% vacancy of judges across various High Courts in the country. The highest number of vacancies is in the Allahabad High Court with a working strength of 86 judges against the sanctioned strength of 160 judges (i.e. vacancy of 74 judges). The situation is not much better at the subordinate level. As on September 30, 2011, the sanctioned strength of judges at the subordinate level was 18,123 judges as against a working strength of 14,287 judges (i.e. 21% vacancy). The highest vacancy is in Gujarat with 794 vacancies of judges, followed by Bihar with 690 vacancies.

### SOME IMPORTANT VERDICTS IN THIS REGARDS

**S.K. Bhalla v. State**, 180 (2011) DLT 219: In this case it was held that, Section 251 of the Code of Criminal Procedure, 1973 deals with the stage subsequent to issue of process under Section 204 of the Code of Criminal Procedure, 1973 in a summons trial case. Section 251 of the Code of Criminal Procedure, 1973 casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and ask him whether he pleads guilty. This can be done by the Magistrate only if the charge-sheet/complaint/preliminary evidence recorded during enquiry discloses commission of a punishable offence.

### Section 142(2) of the Negotiable Instruments Act, 1881

'A' holds an account with Central Bank of India, New Delhi (South Extension-II), issues a cheque payable at par in favour of 'B'. 'B' holds an account with the State Bank of India, Calcutta (Salt Lake), but deposits the said cheque at Mumbai Branch (Fort, Mumbai Precinct) of the State Bank of India, and the cheque is dishonoured. The complaint will have to be filed before the court having local jurisdiction over the area where State Bank of India, Calcutta (Salt Lake) is situated.

**Kirshna Texport & Capital Markets Ltd. v. Ila A. Agarwal & Ors**, Criminal Appeal No. 1220 of 2009, Supreme Court of India, Date of Decision: 06.05.2015: In this case it was held that, Section 141 of the Negotiable Instruments Act, 1881 states that if the person committing an offence under Section 138 of the Negotiable Instruments Act, 1881 is a company, then, every director of such company who was in-charge of the affairs of the company and was responsible to that company for conduct of its business shall be deemed to be guilty. The reason for creating this vicarious liability is plainly that a juristic entity (that is, a company) is

run by living individuals who are in-charge of its affairs and who guide the actions of that company and that if such juristic entity is guilty, then, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against.

Section 141 of the Negotiable Instruments Act, 1881 does not lay down any requirement that in case of dishonour of the cheque issued by a company through its authorised representatives (directors), the directors must be individually be issued statutory notices as contemplated under Section 138 of the Negotiable Instruments Act, 1881. The individuals who are in-charge of the affairs of the company and running of its business must naturally be aware of the notice of demand under Section 138 of the Negotiable Instruments Act, 1881 issued to such company. Section 138 of the Negotiable Instruments Act, 1881 does not admit of any necessity for reading into it the requirement that the directors of a company issuing cheques for and on behalf of the company vide the bank account maintained in the name of the company must also be issued individual notices under Section 138 of the Negotiable Instruments Act, 1881.

## **CONCLUSION**

While the Chief Justice of India inaugurated a Fat Track Court at Delhi and exhorted the High Court to act likewise, a Bench of the Supreme Court, in Brij Mohan Lal vs Union of India and others, 2005, allowed the Central and State Government to close down over 1,500 FTCs on the ground that funds were no available. FTCs were started by the Central Government pursuant to the observations of the First National Judicial Pay Commission, 1999, the 120<sup>th</sup> Report of the Law Commission on Manpower Planning in the judiciary, the report on Crime in India published by the National Crime Records Bureau and the lamentations of every Chief Justice of India who used the Law Day address to highlight the mounting arrears and the paucity of funds available to the judiciary. India has about 11 judicial officers per million populations as compared to Australia's 42 and Canada's 75; the United Kingdom has 51 and the United States has 107 per million populations. To deal with the current volume of litigation and eliminate arrears, India needs to appoint five times the present strength of judges. The Central and State Government, however, treat the judiciary as a pariah and pretend not to understand how important this institution is for survival of democracy itself.

## **SUGGESTION**

As far as the reach of this study is concerned, it reveals the importance and significance of the establishment of Fast Track Courts to resolve the pending cases of negotiable instruments. Although some Fast Track Courts have been established and these are functioning smoothly even though there is an urgent need of some more such courts across the country because of heavy pressure of backlog of pending cases. Not only the FTC must be there but also the appointment of Judges must be done timely and in desired numbers. It is irony in our country that very less number of Judges has been appointed for resolving the pending cases. Therefore, along with the establishment of FTCs, the desired number of Judges and appellate authority must also be recruited so that the faith in judiciary must be sustained.



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