



# Bouncing cheque: Let it bounce

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In an article published in Law & Our Rights page of the Daily Star last year, the decision of the High Court in *Abdus Salam v Munshi Rashed Kamal*, reported in 54 DLR 234 was discussed. And it was submitted that a wider or more liberal interpretation to Negotiable Instruments Act 1881 (NIA) section 138 ought to have been given looking at the purpose of the law. Subsequently, it has been revealed that the Appellate Division had already upheld (reported at 53 DLR, AD 111) another decision of the High Court Division in *Habibur Rahman Howlader v State* where a more liberal interpretation had been advocated.

**Section 138 at a glance**

Section 138 of the Negotiable Instrument Act (NIA) 1881 was amended mainly to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques with adequate safeguards to prevent harassment of honest drawers. However, it is a common saga in our society that cheques get dishonoured for say, insufficiency of funds, or under the drawer's instructions to stop payment, or even that the account has since been closed. Obviously this is a serious matter for the payee and unless it is an honest error on the part of the drawer it often causes severe hardship for the payee. Filing a money suit to obtain payment is an obvious method to make the drawer pay, but this is often futile as civil remedy is not as effective as a criminal sanction. Sections 406/420 of the Penal Code does provide a solution, but it is often difficult to prove the ingredients of the same. Section 138 of the NIA was amended to provide a greater deterrent. Hence, if proper procedure is followed, a defendant upon conviction could face a sentence of imprisonment of upto one year or a fine of upto thrice the amount of the cheque or both. Most importantly, the payee could get the cheque amount from the fine so obtained. The intention of the legislature, therefore is to make it a strict penal law which otherwise was a "matter of civil remedy, at the same time keeping the other options open". That a plain reading of the law clearly stipulates that for the offence to bite, the cheque must have been presented to the bank within a period of six months from which it is drawn or within the period of its validity whichever is earlier (s.138(1)(a)). Thereafter, a demand for payment has to be made in writing by the payee within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid (s.138(1)(b)). Finally, for the cause of action to arise, the drawer of the cheque must have failed to make the payment as called for within 15 days of the receipt of the said notice (s.138(1)(c)). The case has to be filed in the court of the Chief Metropolitan Magistrate or in a court of First Class Magistrate by a complaint made in writing by the payee or holder in due course within one month of the date upon which such cause of action would arise (s.141).

S. 138(1)(a) does not impose any restriction whatsoever upon the number of times a cheque can be presented to bank for payment. It is a common practice in the commercial world that the drawer arranges for payment and asks the payee to present the cheque again. It also allows the parties to maintain their commercial relationship. If people were forced to file a complaint after the first bounce leaving no second chance, that would be going against the plain intention of the legislature. The judgement in 54 DLR 234, however, did put such a restriction on the law. According to this judgement, unless legal notice is issued within 15 days of the first time a notice of dishonour is obtained from the Bank (drawee), then remedy under section 138 is gone. If therefore, even by trickery or fraud, the issuer of the cheque manages to see 15 days go by, the innocent payee has no remedy. In the previous article, support in favour of unlimitted number of presentation was drawn from a number of decisions of the Indian High Courts, including the decision of the Indian Supreme Court in *Sadanandan Bhadran v Madhavan Sunil Kumar* (1998) 94 Comp. Cas 813 wherein it was held: "... section 138 does not put any embargo upon the

payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transactions, it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after some time, on his own volition or at the request of the drawer, in expectation that it would be encashed.

Needless to say, the primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally is taken out of compulsion and not choice. For the above reasons, it should be held that a cheque could be presented any number of times during the period of its validity.

It may be noted that the judgement in 54 DLR 234 was pronounced on 10th March 2002, but the judgement in *Habibur Rahman Howlader v State* (presided over by Md. Hamidul Haque J. & Md. Mansurul Haque Chowdhury J.) which took a contrary view was delivered on 29th June



2000, i.e. nearly two years earlier. What is interesting to note is that though this earlier High Court judgement had been affirmed by the Appellate Division (reported at 53 DLR (AD) 111) on 7th November 2000, till the writing of this article, it has not been reported anywhere. Moreover the judgement of the Appellate Division is quite concise and does not go into the detailed facts. This reported short judgement was not even cited in 54 DLR 234, perhaps lawyers for both sides did not find it relevant, though they were appreciated by the learned Judge for their "illuminating and enlightened arguments" (54 DLR 234, at p.238).

**Fact of the Habibur Rahman's case**

In *Habibur Rahman Howlader v State*, two cheques, as part of a business venture, one for Tk. 54, 91, 968 was issued by the defendant on 16.3.99, presented to the Bank by the complainant on 18.3.99 and returned by the Bank on 18.4.99 with remark fund insufficient, the same cheque was again presented on 27.5.99 and the same was returned on 7.6.99 with the remark account closed and the other cheque for Tk. 5, 75, 000 was issued on 26.1.99, presented on 01.02.99 and returned by the Bank on 08.03.99 with remarks of fund insufficiency and the same was presented again on 27.5.99, returned on 07.06.99 with remarks account closed. Then on 17.6.99 and 21.6.99 the complainant through his counsel sent two legal notices under s. 138 of Negotiable Instrument Act demanding payment and when the defendant failed to comply, filed complaint on 15.7.99 before the Magistrates' court who took cognizance. Subsequently the defendant got anticipatory bail from the High Court and filed a case under section 561A of the Criminal Procedure Code (Criminal Misc. Case No. 1813/2000). It was alleged that since the demand for payment had not been made within 15 days of the first return of the cheques, the proceedings were liable to be quashed. Rejecting this contention, Md. Mansurul Haque Chowdhury J (as he then was) stated: "It appears from the petition of complaint that both cheques were presented to the Bank within six months from the date of issuance. According to proviso (a) of section 138 of Negotiable Instruments Act a cheque is to be presented to the Bank within a period of six months from the date on which it is drawn or within the period of validity whichever is earlier. There is nothing in the law specifying that a cheque can be presented only once within six months from the date of issuance and a days time for serving notice demanding money shall be counted from the date of return of first presentation. We have carefully examined the language of section 138 of the said Act. In our view such a cheque can be presented to the bank more than once but the cheque must be presented to the Bank within six months from the date on which it is drawn or within the period of its validity".

Subsequently the defendant-petitioner lodged a Petition seeking leave to appeal against this judgement before the Appellate Division (Crim. Petition for Leave to Appeal No. 21/2000). Dismissing this appeal, in a short judgement Latifur Rahman CJ held: "It appears that the accused-petitioner issued two cheques and those two cheques were placed for encashment in the bank within 6 months. Once it was returned with the remark that the fund was insufficient and again it was returned with the remark that the account was closed. The complainant served a legal notice within 15 days of the receipt of the information of return of cheques in question and, as such, there was no valid ground for quashing the proceeding..."

**Concluding remarks**

The judgement accords with the intent of the legislature, which is clearly to deal with the mischief of defrauding people by unscrupulous issuance of cheques. Thus no restrictions should have been imposed into clear wording of NIA by interpretation. Time should be computed from the notice of the last dishonour so long as the cheque is presented during the period of its validity. These decisions undoubtedly have significant impact on everyday commercial life and the correct method should be adopted in the light of the judgement in *Habibur Rahman Howlader v State* by the Magistrates and legal counsels alike. It should also come as a relief for innocent litigants who have been victims of cheque fraud and act as deterrent against those whom the legislature have targeted for proper punishment.

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**LAW letter**

**Draft law is inadequate to protect consumers' rights**

In the proposed Consumer Protection Act there is a little guarantee for consumer's right as the president of the district chamber will be the chairman of the arbitration board. Undoubtedly, chairman of the district chamber represents business group who wouldn't be able to do justice towards consumers. Nevertheless it is inauthentic that in the case of the incapability of the president of the district chamber any person nominated by him may sit as the chairman of the arbitration board. It is a vague idea that there are no set criteria for the person who would sit instead of the chamber-president.

Besides, there is no provision for compensation in the draft law for the violation of consumer's rights. Only criminal punishments would be given to the violator, however draft law doesn't articulate under what law the trial will be conducted.

Finally, the draft law has a great deal of limitations. It must be reviewed in order to protect consumers right in a skilful way. Proposed law is to be discussed more widely in public if government is really sincere about consumer's rights.

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**LAW amusements**


Once, in Dublin, a solicitor came up to a barrister to beg a subscription towards the funeral expenses of a brother solicitor who had died in distressing circumstances. The barrister at once tendered a pound note.

"Oh, I only want a shilling from each contributor," said the solicitor. "Take it, my dear fellow," replied the barrister. "And while you're at it, bury twenty of them!"

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The local United Way office realised that it had never received a donation from the town's most successful lawyer. A local volunteer calls to solicit his donation, saying our research shows that even though your annual income is over a million dollars, you do not give one penny to charity! Wouldn't you like to give back to your community through The United Way?"

The lawyer thinks for a moment and says: "First, did your research show that my mother is dying after a long, painful illness and has huge medical bills far beyond her ability to pay?"

Embarrassed, the United Way rep mumbles, "Uh, no."

"Secondly, that my brother, a disabled veteran, is blind and confined to a wheelchair and is unable to support his wife and six children?"

The stricken United Way rep begins to stammer an apology but is cut off.

"Thirdly, that my sister's husband died in a dreadful traffic accident," the lawyers voice rising in indignation, "leaving her penniless with a mortgage and three children?"

The humiliated United Way rep, completely beaten, says simply, "I had no idea."

The lawyer then says "... and if I don't give any money to THEM, why should I give any to you?"

**Corresponding Law Desk**

Please send your mails, queries, and opinions to:  
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**FOR YOUR information**


## Consumer protection laws in Bangladesh

**LAW DESK**

ALTHOUGH there is no comprehensive law in Bangladesh to protect the consumer's rights there are some laws which are operating in different fields. The government is going to promulgate a consumer law soon. A draft of the consumer protection law is prepared by the ministry, which is under consideration of the law ministry. We hereafter summarise the existing laws relating to the protection of consumer's rights.

**The Control of Essential Commodities Act, 1956**
**Objective**

The objective of this law, which came into effect on September 19, 1956, is to impose restriction over the essential commodity prices. In order to impose restriction over the essential commodity prices Government possesses the right to produce, distribute, preserve, use and trade, etc. of the essential commodities to time.

**Policy instrument**

Policy instrument of the law is introduction of license and permit system, through which Government has been empowered

To interdict the withdrawal of the sale of the commodities kept for sale and

U direct the hoarder to sell those commodities, in partial or in aggregate, at a determined price, and

To direct for keeping systematic accounts of the essential commodities and

U presenting records to the authorised government officials in special cases.

**Punishments for violation**

Three years imprisonment, or

U A penalty, or

U Both.

**Essential Commodities Price & Bond Ordinance, 1970**
**Objective**

To guarantee the current prices of commodities so that Government possesses the right to determine the prices of essential commodities.

Government is empowered with the following right:

Fixation of maximum price,

U Publication in the government gazettes,

U Estimate cost of commodities imported or produced,

U Estimate related cost of commodities, and

U Consider reasonable profit margin for the producers and

**Enforcing the producers**

U To mention the price on the commodity,

U To disclose the price list publicly, and

U To issue receipts for the commodities sold.

**The Pure Foodstuff Ordinance, 1959**
**Objective**

The objective of this ordinance which came into effect on Oct. 14, 1959 and later amended in 1966 is to check and control adulteration and production, supply and distribution of several foodstuffs including milk and powder milk, flour, edible oils, butter, etc.

**Restrictions imposed**

Production and sale of adulterated food stuffs, foods harmful to men and animals, brands in labelling and advertisements,

U Sale of flesh of dead animals (banned) and

U The involvement of people suffering from infectious diseases like tuberculosis leprosy etc. in production and sale of food items.

**Policy instruments**

Attachments of sanitary inspectors to relevant departments of government to inspect the status of implementation of the law so that

U Any sanitary inspector can collect the samples of any of the listed foodstuffs and send it to the selected testing laboratory for determining the standard of quality, and

U Any citizen can also bring samples of food items to the laboratory of Institute of Public Health and Nutrition to determine the quality of the product.

**Punishment**

If the sample is found adulterated the local authority enjoys the power to take following actions:

For first time violation of the law punishment ranges up to fine of Tk. one thousand or imprisonment for up to one year or both, and

U For a second time violation the highest length of imprisonment remains the same while the highest limit of fine rises to taka four thousand only.

**Trade Mark Act, 1940**

Prior to 1940, there was no statutory law relating to trademarks in the British India, and the law, which was applicable to the subject, was based on common law that was substantially the same as that applied in England before the passing of the first Registration Act in 1875. The Trade Mark Act 1940 (TMA) promulgated in 1940, introduced for the first time for the registration and statutory protection of trademarks in Bangladesh.

**Objective**

Trade Mark Act, 1940 has following objectives:

To enable the customers to identify the particular product of their choice out of many, and

U To prevent duplication as well as cheating the consumers.

**Punishments for Violation of the Act:**

U Two years imprisonment, or

U A penalty, or

U Both

**Breast Milk Substitutes Ordinance, 1984**
**Objective**

This ordinance came into effect on May 24, 1984 with the following objectives.

To encourage breast feeding, and

U To control marketing of breast milk substitutes through showing or publishing of highly motivating advertisement of breast milk substitutes.

**Restrictions imposed**

Prohibition of attractive & lucrative advertisements, and