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THE NEGOTIABLE INSTRUMENTS ACT: A PILLAR OF COMMERCIAL LAW

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INTRODUCTION

After the end of the era of the barter system, transactions between sellers and buyers began with the exchange of money as the consideration. The evolution of different kinds of transactions gave rise to new ways and modes of payment like cards, UPI, NEFT/RTGS, cheques, etc., which also include Negotiable Instruments. Generally, the negotiable instruments include three kinds of instruments, viz, promissory notes, bills of exchange, and cheques. These instruments act as a catalyst for the financial transactions, especially in commercial transactions among companies, firms, businesses, organisations, etc. It plays a vital role in commercial law, specifically dealing with dishonor of cheques, promissory notes, or bills of exchange. The word “negotiable” means transferable from one person to another in return for consideration, and the word “instrument” means a written document by virtue of which a right is created in favour of some person. Therefore, the term “negotiable instruments” collectively means a document which entitles a person to a sum of money and which is transferable (like Cash) by delivery. The Negotiable Instruments Act, 1881 (26 of 1881) (hereinafter referred to as ‘the Act’) prescribes the provisions related to negotiable instruments. It was enacted on 9th December, 1881 and came into force on 1st March, 1882. It consists of 148 Sections, which are categorised into 17 Chapters.

HISTORICAL ROOTS

The roots of the negotiable instruments can be traced back to Mesopotamia. Earlier, clay tablets were employed as a means for recording receipts of goods deposited, later, which could then be transferred to third parties. On similar lines, in Rome and Europe, traders and

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merchants developed various instruments to facilitate trade across regions. However, in the 12th and 13th centuries, the Italian merchants avoided the transactions of large amounts of gold or silver; instead, they used the modern bills of exchange.

By the rise of the 17th century, the concept of negotiability was adopted by countries like England, France and the Netherlands. Simultaneously, merchants developed customary laws known as The Law Merchant (Lex Mercatoria) to recognise and enforce the validity of negotiable instruments. Thereafter, these customs were gradually incorporated into the common law of England through judicial adjudications.

In India, there was an indigenous system of credit instruments known as Hundi. The British rule introduced the formal negotiable instruments. The growth and development of commercial transactions led the British government to enact a uniform legal framework. Consequently, the Negotiable Instruments Act, 1881, was enacted to deal with commercial transactions.

WHAT ARE NEGOTIABLE INSTRUMENTS?

Negotiable instruments, as such, are not defined anywhere in the Act. However, Justice Willis, “A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it”. Section 13 provides for the Negotiable instruments which states that “Negotiable Instruments means a promissory note, bill of exchange or cheque payable to order or to bearer.”² This definition encompasses the following three negotiable instruments:

Promissory Note- Section 4 defines the promissory note as “an instrument in writing 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.”³

Bill of Exchange- It is “an instrument in writing containing an unconditional order, signed by the maker, **directing** a certain person to pay a certain sum of money only to, or to order of, a certain person on a specified banker and payable on demand.”⁴

² Section 13 of the NI Act, 1881

³ Section 4

⁴ Section 5

Cheque- It is “a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand, and it includes the electronic image of a truncated cheque and a cheque in the electronic form.”⁵

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

The following are the characteristics of Negotiable Instruments:-

- **Transferable:** It is transferred by mere delivery in case of instrument is payable to bearer. Whereas an instrument payable to order, it is transferred by endorsement and delivery.
- **Secure and Independent Title of Transferee:** Negotiable Instruments are an exception to the principle of “*nemo dat quod non habet*”, i.e. no one can transfer a better title than he himself has. However, if the transferor had obtained a negotiable instrument by fraud, but the transferee obtains that negotiable instrument in good faith for value, then the transferee shall enjoy a good title as regards that negotiable instrument.
- **Concise and Expressed in Writing:** A negotiable instrument is a carrier without luggage. It must be expressed in writing, and the words must convey their clear and precise meaning. It must be free from all conditions which would materially impede its circulation. Additionally, it must involve payment of a certain sum of money.
- **Right To Sue:** There is no prerequisite condition for the transferee to sue the transferor. The transferee need not serve notice of the transfer of the negotiable instrument to the drawer who is liable to make/honour the payment. He can sue in his own name in case of dishonour of the negotiable instrument without informing the original debtor of the fact that the transferee has become the holder of the negotiable instrument.
- **Presumptions:** The Act contains certain presumptions that apply to all negotiable instruments. These presumptions are as follows:-

PRESUMPTIONS UNDER SECTION 118 OF THE ACT

- **Presumption as to Consideration:** It is presumed that every negotiable instrument is made in good faith for some consideration. In case of dishonour of a cheque, the accused can avoid the liability by proving that he is not liable to make any payment

⁵ Section 6

under the negotiable instrument to the complainant, as there is no sum due to be paid to the complainant by the accused person.

- **Presumption as to Date:** It is to be presumed that the negotiable instrument was drawn on such date as is mentioned on the face of the negotiable instrument.
- **Presumption as to Time of Acceptance:** It is presumed that the instrument was accepted within a reasonable time period after the date of its execution.
- **Presumption as to Time of Transfer:** It is presumed that the instrument was transferred before the date of its maturity.
- **Presumption as to Order of Indorsements:** It is to be presumed that the indorsements were made in the order of sequence in which the instruments appear thereon.
- **Presumption as to Stamp:** it is to be presumed that the instrument was duly stamped.
- **Presumption as to Holder in due Course:** It is presumed that the instrument was taken in good faith and for consideration. However, the accused is burdened to prove that the holder of the negotiable instrument is not a holder in due course.
- **Presumption on proof of protest under Section 119:** In case of dishonour of promissory note or a bill of exchange, on the proof of protest, the court shall presume the fact of dishonour, until and unless the same is rebutted by the acceptor of the bill of exchange or the promissory note.

REQUISITES OF NEGOTIABLE INSTRUMENTS

To execute a valid negotiable instrument, there is a slew of requisites which must be kept in mind. These are the following⁶

- *Written:* the instrument must be in writing, which has a degree of permanence.
- *Signed by the maker:* the instrument must be signed by the maker or in his representative character. The signatures must be authentic and can be in any form.
- *Definite order or promise to pay:* it must be more than a mere acknowledgement of a debt. The terms “pay” or “I/We promise” are sufficient to meet the aforesaid criteria.
- *Unconditional:* the payment must be free from all contingent conditions, agreements or any such other conditions. Also, it cannot be paid out of a particular fund (except for a government-issued instrument).

⁶ NACM's Principles of Business Credit

- *Order or promise to pay a certain sum of money:* the instrument may state a certain sum even if payable in instalments. However, the cost of collection and fees of an attorney do not disqualify the statement of a sum certain.
- *Payable in money:* There are no other options available to the drawer or maker to retain the amount in money.
- *Payable on demand or at a definite time:* an instrument must be payable on demand. The time may be specific, or any other duration of time period shall be fixed for the payment.
- *Payable to order or bearer:* the name of the payee must be clearly specified on the instrument. In case of payment to bearer, the instrument with intend payment to no other particular person shall be payable.

EVOLUTION OF THE NI ACT

Since 1881, commercial transactions have been completely changed with the introduction of digital payments. Simultaneously, with the passage of time, the Negotiable Instruments Act, 1881, has been amended as per the requisites of the current scenario and significant developments. The era of digital transactions has sought to resolve the system of forged instruments, making the commercial transactions more feasible, convenient and accessible with great transparency. The major amendments are as follows:-

- **Amendment in 1988:** *Inserted penal provision for dishonour of cheques due to insufficient funds (Section 138).*
- **Amendment in 2002:** *strengthened the provisions related to dishonour of cheques and introduced summary trials.*
- **Amendment in 2015:** *Inserted Section 143A, allowing courts to order interim compensation, and Section 148 permitting appellate Courts to order deposit of pending appeal.*
- **Amendment in 2018:** *Inserted Section 143A (2) directing that cases of cheque bouncing be tried only in the jurisdiction where the cheque is payable.*

SUPREME COURT'S EXTENSIVE GUIDELINES

In a recent ruling, the Hon'ble Supreme Court addressed the issue of the increasing plethora of cases under the NI Act in the District Courts. In **Sanjabij Tari vs. Kishore S. Borcar**⁷, the

⁷ 2025 SCC Online SC 2069, decided on 25-09-2025

Apex Court highlighted the service of summons on the accused in a complaint filed under Section 138 of the NI Act, as one of the main reasons for the delay in disposal of the complaints. Moreover, the punishment provided for the offences under the NI Act is not a way for seeking retribution, but it is a way to ensure the payment of money and to promote the authenticity as well as the credibility of the cheques. To tackle the current backlog of cases under the NI Act, the Court issued the following guidelines:-

- The service of summons shall also be issued dasti, i.e. summons shall be served upon the accused by the complainant in addition. Furthermore, the trial Courts shall serve summons by electronic means in terms of relevant provisions under BNS, 2023.
- An affidavit of service of summons shall be filed by the complainant. If, in case, the affidavit is found to be false, the Court shall take appropriate action against the complainant.
- To ensure speedy disposal, the Principal District and Sessions Court shall operationalise dedicated online payment facilities through protected QR codes or UPI links. In addition, the summons shall expressly state the option to make payment of the cheque amount at the initial stage.
- Now, a Synopsis shall also be filed, immediately after the index of the complaint under Section 138, in the format prescribed by the Hon'ble Supreme Court.
- There shall be no requisition for issuing summons to the accused at the pre-cognisance stage under Section 223 of BNS.
- The Trial Courts shall record cogent and sufficient reasons before converting a summary trial to a summons trial.
- The Court shall record the responses of the accused in the presence of his/her counsel and, thereafter, determine whether the case is fit to be tried summarily under Chapter XXI or Chapter XXII of the BNS, 2023.
- In appropriate cases, the Trial Courts shall use their discretionary power to order payment of an interim deposit as early as possible under Section 143A of the NI Act.
- The High Courts shall ensure that after the service of summons, the cases are placed before the physical courtrooms. And, exemptions shall be granted in reasonable circumstances and only when facts so warrant.
- The High Courts should issue practice directions and set up realistic pecuniary benchmarks for evening Courts.

- A dashboard reflecting the pendency and progress of cases under Section 138 shall be maintained by each District & Sessions Judge in Delhi, Mumbai and Calcutta. These courts shall also conduct monthly reviews of the functioning of the Magistrates handling NI Act matters. A consolidated quarterly report shall be forwarded to the High Court.
- The Chief Justices of Delhi, Mumbai and Calcutta shall form an Administrative Committee to monitor the pendency and to ensure expeditious disposal of Section 138 of the NI Act cases. These committees shall meet at least once a month and appoint the well-trained and experienced Magistrates to deal with cases under Section 138 of the NI Act. It shall also promote mediation and other alternative dispute resolution mechanisms.

Conclusively, the Apex Court underscored the backlog of cases under the NI Act and issued guidelines which shall be implemented by the High Courts and District Courts not later than 01st November, 2025.

SIGNIFICANCE OF NEGOTIABLE INSTRUMENTS IN COMMERCIAL LAW

Negotiable Instruments are the backbone of the Commercial law as they provide a feasible and authenticated way of payment in commercial transactions. These are legally recognised substitutes for cash which provide secure and efficient credit-based transactions. It plays a vital role in ensuring liquidity, maintaining working capital and cash flow effectively without any necessity to depend on physical currency. It serves as the documentary evidence of financial obligation, which is enforceable in a court of law.

This is one of the best safeguards for an honest man who is protected from fraudsters, deceivers, dishonest persons, and such other people having malicious intentions. However, it guarantees the payment of assured consideration. Moreover, the judicial precedents have strengthened the procedure and ensured the proper implementation of provisions of the NI Act. Significantly, the commercial law aims to ensure speedy transactions and transparency in commercial transactions. For this purpose, negotiable instruments proved to be an assurance for the consideration. Furthermore, the NI Act encompassed the various provisions prescribing a chronological series of procedures for matters related to negotiable instruments.

CONCLUSION

Therefore, the current legislation, since 1881, has addressed the issues about negotiable instruments. In a nutshell, it enforces the legal rights arising out of the negotiable instruments

and, hence, provides a shield for the person to recover the amount of consideration. This Act criminalised the dishonouring of cheques, which, significantly, strengthened the value of the negotiable instruments. However, the Supreme Court frequently directed the authorities and prescribes number of guidelines while delivering the judgments. Recently, the Supreme Court addressed the issue of the backlog of cases under the NI Act and issued guidelines for the speedy disposal of cases related thereto. The Apex Court also emphasised the integration of digital payment interfaces with the recovery of amounts in such cases, as well as the service of summons through online modes. Consequently, the evolving scope and nature of commercial transactions have awakened the need to integrate the procedural aspects of negotiable instruments with the current scenario of rapid development and growth.