



Chandrawat  
& Partners



# GUIDE ON CHEQUE BOUNCE IN INDIA



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# Introduction

The introduction of technology into our daily lives has had a significant impact on how we handle financial transactions. Conducting monetary transactions has been more convenient and efficient for many people since the introduction of digital payment systems. Digital payments eliminate the need to stand in long lines or worry about misplacing physical checks, and they provide a more rapid method of completing transactions. Banking transactions have become simpler and faster, and we can now make payments and transfer money with a few taps on our smartphones.

Despite the convenience of digital payments, many people still prefer to make financial transactions by cheque. For many years, cheques have been seen as a secure method of transferring payments and making purchases. However, there is a possibility of a 'bounce' or 'dishonour' when using cheques. A 'dishonoured cheque' is one that has been refused by a bank for a variety of reasons, which can result in fines, penalties, and even incarceration.



# Meaning

A cheque is a negotiable instrument that can be issued to a bank in order for it to pay the specified amount of money, which is stated in both digits and words, to the person whose name appears on the cheque. Cheques are frequently used in a variety of transactions, including but not limited to loan repayment, salary payments, and so on. When drawn on a certain bank, a cheque is only payable on demand.

Ideally, when a cheque is presented to a bank, it is cashed and the sum is deposited into the specified person's account. However, when a cheque is returned unpaid in specific situations, it is said to be dishonoured or bounced. This could happen for a number of reasons, including a lack of finances, a mismatch in signatures, and so on. When a cheque bounces, the bank sends a 'cheque return memo' along with the reasons for non-payment.

The 'drawer' is the person who writes the cheque, and the 'drawee' is the person in whose favour the cheque is written. Cheques are commonly used because they provide greater security than other kinds of money transfer, such as National Electronics Funds Transfer ("NEFT"). A crossed cheque, for example, cannot be cashed by anybody other than the payee and will be deposited exclusively in the payee's account.

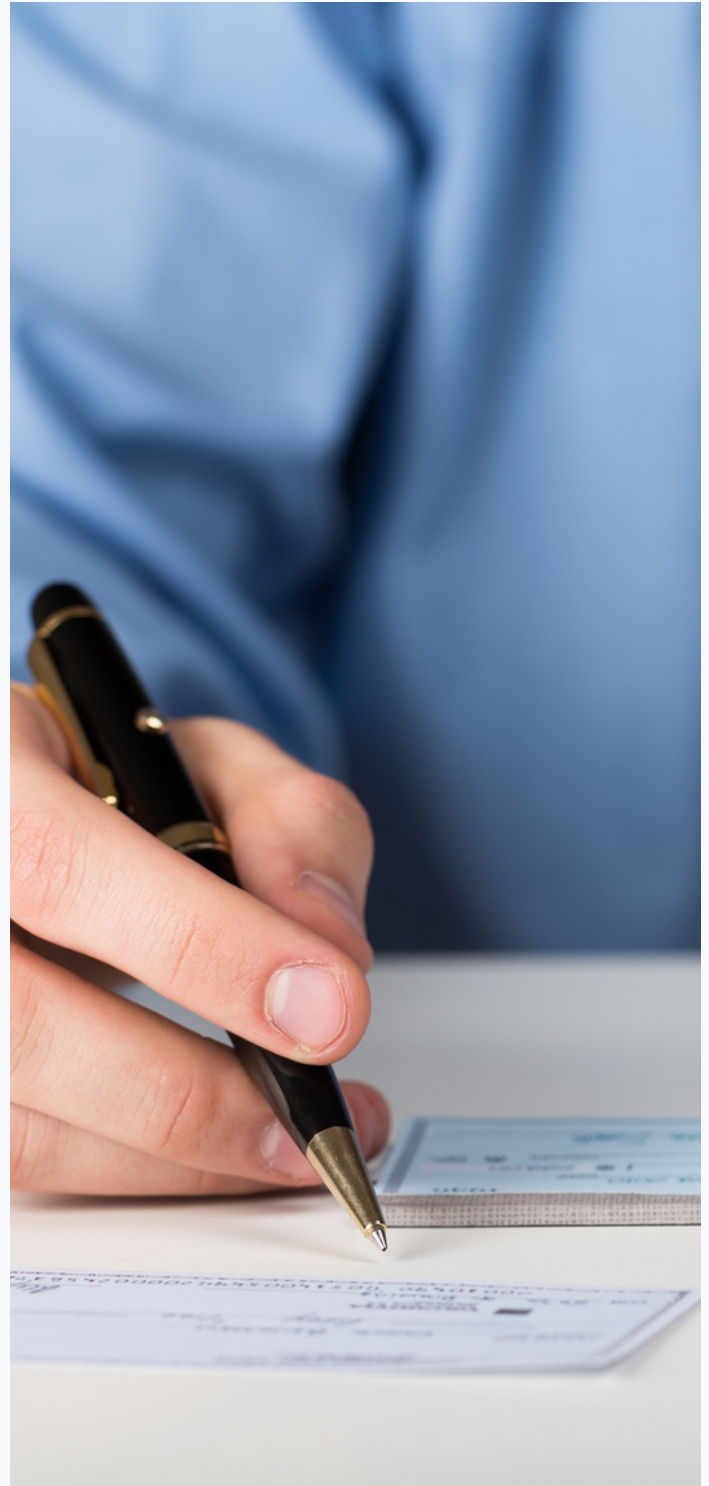
Cheque bounce instances occur throughout the country, which is not surprising given that there are over 33 lakh pending cases before the courts of law as of October, 2022.

# Reasons for dishonouring of cheque



- **Expiry:** Presenting a cheque more than three months after it was issued renders it invalid.
- **Account number incorrect:** Incorrect account numbers render the cheque void.
- **Contradiction between the quantity stated in language and figures:** If the amount submitted in numbers differs from the amount stated in words, the cheque will be returned.
- **Signature inconsistency:** When the signature on the cheque does not match the signature on official documents, the cheque is rejected.
- **Illegible or overwritten writing:** When the account number, name, or amount of a cheque is rewritten, the cheque is considered dishonoured.

- **Bank account has been closed:**  
The cheque is returned when the account is closed, either by the account holder or by the bank.
- **Insanity or insolvency:** When the drawer of the cheque becomes insane or insolvent, the cheque is rejected.
- **Overdraft limits exceeded:**  
When the overdraft amount, which is the maximum withdrawal limit, is surpassed, cheques will be dishonoured.
- **Withheld payment:** If the account holder stops making payments, the cheque will be returned.
- **Inadequate opening balance and insufficient funds:** A cheque will bounce if the account drawer's opening balance is less than the specified amount or if the funds in the account are insufficient to cover the cheque.





# Legal Procedures Pertaining to Cheque Bounce Cases

When a cheque bounces due to technical issues or insufficient cash, the bank charges the drawer and the drawee. Cheque bounce cases are dealt with in Section 138 of the Negotiable Instruments Act of 1881. It also describes the possible measures to be undertaken when a cheque is dishonoured:

- **Submitting the cheque again for perusal**

When a cheque bounces, the individual can resubmit the cheque for clearance after the issuer of the cheque has had an opportunity to correct the errors in the issued cheque. This must be completed within three months of the date the cheque bounced. The bank notifies the recipient of the dishonouring of the cheque by issuing a 'cheque return memo,' which states the reasons for the non-payment of money specified in the cheque. To make a valid claim, the prospective recipient must submit the cheque to the bank within three months of its issuance date; otherwise, the cheque will expire.

- **Issuing demand notice:**

If the cheque is dishonoured for the second time consecutively, the recipient may present a demand notice to the issuer. The demand notice typically instructs the cheque's issuer to indemnify the required funds within 15 days of receipt. This demand notice must be issued within 30 days of the date the cheque was returned unpaid. The court will not accept any delay in issuing the notice unless there is a reasonable reason for it.

- **Lodging a complaint:**

If the issuer of the cheque fails to respond to the demand notice, the recipient of the bounced cheque has 30 days from the date of expiry of the demand notice to file a formal complaint. A case can still be registered after this time period if there are valid reasons for the delay. However, the usual time limit for resolving cheque bounce cases is 30 days.

The jurisdiction of the courts, where such complaints can be filed, is determined by where the cheque was drawn, presented, or returned by the bank. Although Section 138 of the Negotiable Instruments Act of 1881 can be invoked in these circumstances, gift cheques are not covered in this ambit.

When a complaint about a cheque bounce is filed, the First-Class Judicial Magistrate should check to see if the required court fee has been paid and if the required documents, such as a copy of the notice, the original cheque, and the acknowledgment receipt, have been provided. It is also required that the complainant physically appear before the Court to be examined by the Magistrate.





Following that, the Magistrate will forward the summons required to be sent to the cheque's issuer, requesting that the individual appear before the Court. If the issuer is found guilty, he or she will face a fine or imprisonment under Section 138 of the Negotiable Instruments Act. Since the act amounts to cheating, the recipient of a bounced cheque may seek protection under Section 420 of the Indian Penal Code, 1860.

- **Lodging a Civil complaint**

A cheque bounce case is typically treated as a criminal case, with the issuer of the cheque facing imprisonment or a fine. However, the victim who is the recipient of the bounced cheque is not always compensated with the full amount. As a result, it is recommended that the victim file a separate civil suit to recover the amount owed to him.

This is possible by filing a summary suit under Order 37 of the 1908 Code of Civil Procedure. This is distinct from a regular civil suit in that the defendant does not have the right to defend himself. To do so, the defendant must first obtain permission from the court.

Aside from appropriately punishing the defaulter with imprisonment or a fine, the bank should also take steps to warn the defaulter by withholding access to banking facilities. It is also prudent on the part of the bank if it insists on closing the individual's account.

Recently, the mandatory suspension of bank withdrawals for a few days following cheque bouncing has also been proposed in order to hold defaulters accountable for their actions. It has also been suggested that cheque bounce cases be resolved through mediation within 90 days.

# How we can help?



In the modern financial landscape, cheque bounces can present significant challenges for individuals and businesses alike. When a cheque is dishonored due to insufficient funds or other reasons, it can lead to financial strain, damaged relationships, and legal repercussions. Chandrawat & Partners can provide valuable assistance to clients by offering specialized expertise, strategic guidance, and customized solutions.

- **Expert advice:** The firms can provide expert advice on the best course of action for both parties involved. The firm can explain the potential outcomes of legal actions, the costs involved, and the likelihood of success, allowing clients to make informed decisions.
- **Compliance and documentation:** The firm can ensure that all legal procedures are followed correctly and that the necessary documentation is properly prepared and submitted to the relevant authorities or court.
- **Arbitration and mediation:** In some cases, arbitration or mediation may be preferred over traditional court proceedings. The firm can help explore these alternative dispute resolution methods, offering a more efficient and cost-effective way to resolve the matter.



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