MF-104, Ajay Tower,
E5/1 (Commercial),
Arera Colony,
BHOPAL – 462 016
Website – www.indialegalhelp.com
E-mail – indialegalhelp@gmail.com

Decriminalization of Doing Business in India – Cheque Bouncing

By Anil Chawla Law Associates LLP

A. Introduction & Background

Department of Financial Services, Ministry of Finance, Government of India issued a Press Note on 8th June 2020 for Decriminalization of Minor Offences for Improving Business Sentiment and Unclogging Court Processes. The introduction paragraph of the Press Note reads as follows:

> Decriminalisation of minor offences is one of the thrust areas of the Government. The risk of imprisonment for actions or omissions that aren't necessarily fraudulent or the outcome of malafide intent is a big hurdle in attracting investments. The ensuing uncertainty in legal processes and the time taken for resolution in the courts hurts ease of doing business. Criminal penalties including imprisonment for minor offences act as deterrents, and this is perceived as one of the major reasons impacting business sentiment and hindering investments both from domestic and foreign investors. This becomes even more pertinent in the post COVID19 response strategy to help revive the economic growth and improve the justice system.

The Press Note lists 19 Acts under which specific offences are proposed to be decriminalized. However, maximum public attention has focused on decriminalization of offence of cheque bouncing.

Across the country, lawyers and associations of lawyers are up in arms against the change. Many lawyers feel that they will lose their livelihood if cheque bouncing is decriminalized. The protests from small traders have also been heard but are largely not as loud. On the other hand, many chambers of commerce have welcomed the step. Banks, financial institutions, NBFCs and associations of their employees have opposed the proposed change.

In most city courts of India, cheque bouncing cases form the largest bulk of cases. It is estimated that more than 35 lakh (35,00,000-) cases related to cheque dishonour

are pending in various courts in India. Honourable Supreme Court recently quoted from a study which indicated that about 15% of all cases in criminal courts in India are related to cheque bouncing:

> **4. Despite many changes brought through legislative amendments and various decisions of this court mandating speedy trial and disposal of these cases, the Trial Courts are filled with large number of pendency of these cases. A recent study of the pending cases, reflects pendency of more than 35 lakh, which constitutes more than 15 percent of the total criminal cases pending in the District Courts. Further, there is a steady increase in the docket burden.**

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The large number of cases filed on account of bounced cheques every year has on one hand clogged and burdened the judicial system of India and on the other hand created a class of professionals (lawyers) who specialize either in helping holders of bounced cheques pursue their debtor or in helping the issuers of bounced cheques evade the long arm of law.

A cheque is part of a private transaction between two entities. Government or the state has no role in the transaction. However, under the present law if the cheque bounces the judicial system takes the view that by default the entire fault lies on the side of the issuer of the cheque and the holder of the cheque needs protection of the state machinery. Subsequently, the state prison system spends money to hold the issuer in jail for a few months or years. All this is done without ascertaining or even asking whether there was any criminal intent on part of the issuer of bounced cheque. For example, the issuer of cheque may be a victim of force majeure situation but that is no defense in the eyes of the present law and he / she must go to jail and the government will spend precious resources for the purpose.

Law related to cheque bouncing was amended in 1988 (w.e.f 1-4-1989). Statement of Objects of Act No. 66 of 1988 defined the purpose of bringing about the changes as follows:

(xi) to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers.

In 1988, the Parliament made cheque bouncing a criminal offence "*to enhance the acceptability of cheques in settlement of liabilities*". Intention was also to have "*adequate safeguards to prevent harassment of honest drawers*". At that time clearly the purpose of the amendment Act was with a view on trade settlements. There was no intention to provide security to banks, financial institutions, NBFCs, private lenders etc. The Parliament did not wish to make the judicial and prison system of the country collection agents for moneylenders of the country.

In the past three decades, acceptability of the cheques for settlement of trade liabilities has become largely irrelevant. Most trade settlements are taking place online. Sellers demand payment by NEFT / RTGS / IMT and buyers are also comfortable with the same. It is now stated objective of the Government to promote digital payment systems. So, the **objective of 1988 Act to promote use of cheques is clearly outdated and obsolete**.

Due to criminalization of cheque bouncing, moneylenders of all hues and types (public, private, institutional, sharks etc.) have discovered cheques as a medium to use the force of law to their advantage. Presently, no bank or financial institution or NBFC or even unlicensed moneylender lends any money without taking signed undated or post-dated cheques. Surely, this was never the intention of the original Act of 1988. Nevertheless, the use of cheques as security or guarantees for repayment has become rampant. **The issue is whether this is indeed to the advantage of the society at large and whether the country benefits from invoking criminal law in every transaction involving money lending**.

B. Protection of Productive Sections of Society

An entrepreneur or farmer forms productive section of the society while the person who lends money benefits from the work put in by the entrepreneur and the farmer. A country progresses by the efforts of her entrepreneurs and farmers. Whether it is a farmer or an entrepreneur, he / she takes risks and assures the lender of money a fixed return on the money. Of course, the other side of the picture is that if some people did not save money and provide the same to farmer / entrepreneur, there will be no capital for growth.

Essentially, the lender and the borrower have a symbiotic relationship. Both need each other and it is in the best interest of society to promote healthy relationship between the two.

Since the farmer / entrepreneur face risks that are generally beyond his / her control, across the world it has been well accepted principle of state policy that the state and the society lean towards protecting the productive against the ones who only provide capital. It may also be mentioned that many religions look down upon lending money for interest.

In early years of independent India, the sentiment was strongly against moneylenders. The sentiment was expressed through a number of films including the all-time-classic Mother India. During that period, all moneylenders were private and even the banks were private. Hence, portrayal of moneylender as a villain suited the mood of the society. In that period, Usurious Loans Act, 1918 was a strong law which banned high interest rates and put a limit on the power of moneylenders.

USURIOUS LOANS ACT, 1918

Preamble 1 - USURIOUS LOANS ACT, 1918

THE USURIOUS LOANS ACT, 1918

[Act, No.10 of 1918][1]

[AS ON 1957]

In due course, banks were nationalized and public sentiment started viewing banks as distinct from traditional moneylenders. Since the banks were largely government-owned and were part of the socialist regime enforced by the government, it was felt that the banks should not be subject to Usurious Loans Act, 1918. In due course, NBFCs were also excluded from the purview of the Act. As of today, the Act is considered largely dead. Most young lawyers and judges are not even aware of it.

Interestingly, protection of borrower under The Usurious Loans Act is not available with regard to prosecution for the offence of cheque dishonor. In essence, borrowers have been left to the mercy of banks, financial institutions, NBFCs, sharks and other money lenders.

In contrast with the socialism regime of 70s, the banks (even public sector) are under pressure to show profitability. Private sector banks etc., of course, openly adopt shark-like practices. All of them routinely levy service charges which are exorbitant and debit interest which can at times be as high as thrice the so-called prime lending rate. This may be in the name of penal interest or some other fancy nomenclature. For example, credit card companies often charge interest of 2% of the principal amount for a one-day delay in payment. This amounts to more than 700% per annum interest.

Ironically, there is no law in the country to prevent a credit card company from charging such exorbitant interest rate. On the other hand, if the borrower challenges the high interest rate, the credit card company will use the blank undated cheque in their possession to put the credit card user behind bars.

A few months back there was a meeting of banks for a stressed company. The issue came up about operation of bank account for the company. A private multinational bank came forward to open a current account for the company in trouble subject to their normal charges and fees. When questioned about the 'normal charges' it turned out that the private bank wanted Rs. 5,000 per cheque as handling charges. Did the company have any options? No!

Financial system of our country has become heavily loaded in favour of the Shylocks (moneybags). There are a number of special laws for their protection – SARFAESI, Insolvency and Bankruptcy Act being some of the more powerful ones. There are also special courts with draconian powers – National Company Law Tribunal and Debt Recovery Tribunal. Incidentally, there is not a single forum where a borrower can proceed against a moneylender.

The financial system of India has made two key innovations that are unique to India – (a) insistence on **personal guarantee** from director of every limited company and (b) insistence on **blank signed cheque**s from every borrower. The first has completely undone the concept of limited liability which has been a key element for risk taking and industrial growth in most developed countries. The second has converted a civil transaction into one with potential of criminal prosecution even

when the business of the borrower goes through genuine business losses. The two are the **biggest dampeners to young Indians turning entrepreneurs**.

One can sum up by saying that the financial system of the country has, with active support from the government and law enforcing machinery, given up the socialist ideal of being an engine for the growth of national economy. Moneylenders have turned into predators while the borrowers or productive sections of society are like the poor prey with strong arm of law favoring the predators. It is said that in a jungle there is always balance of powers between the predator and the prey so that both can exist. On the same lines, there must be balance between the rights of moneylenders and borrowers. Unfortunately, in view of the constant painting of businessmen as villains and also because of most of the middle class becoming interest-earners, the policy and legal structure has become heavily biased against the producer whether it be an entrepreneur or it be any other borrower. This situation needs to be corrected urgently.

C. Business Risks and Macro Economic Situation

Across the world, setting up a business is fraught with high level of risks. In the USA, "*only about one in three small businesses get to the 10-year mark and live to tell the tale*" (https://www.forbes.com/sites/forbesfinancecouncil/2018/10/25/what-percentage-of-small-businesses-fail-and-how-can-you-avoid-being-one-of-them/#210bc2b143b5) It is said that in the USA, about 20% of businesses fail in the first year and by the end of second year 30% of businesses fail; almost 50% of businesses do not cross their 5th year (https://www.fundera.com/blog/what-percentage-of-small-businesses-fail#:~:text=What%20Is%20the%20Small%20Business,their%2010th%20year%20in%20business.).

The situation in India is probably worse – "*as indicated in a 2016 report issued by the IBM Institute for Business Value and Oxford Economics, 90 per cent of Indian start-ups fail within five years*) [https://www.moneylife.in/article/90-percentage-of-indian-start-ups-fail-within-five-years-report/54262.html].

It needs to be recognized that starting and running a business is more risky than any adventure sport. It may not be an exaggeration to say that the suicide rate among entrepreneurs is higher than the fatality due to mountaineering or paragliding or any other adventure sport.

There is no business house in India which does not have some failed ventures in its closet. Tatas, Birlas, Ambanis, Mittals – without exception every corporate group has failed in some venture or the other. Of course, in our mixed economy the biggest

business house is the government; and the government has failed more often than any corporate group. The big difference is that when government fails it can always bail itself out or can sell off the failed company at a throwaway price without any heads rolling as against the private sector where the loss and hurt is often personal. For example, when Air India has accumulated losses of Rs. 70,000 Crores it is a solvable problem but when Kingfisher Airlines loses one tenth of that amount the promoter is a villain who must be abused and lynched publicly.

The pseudo-moralist approach adopted by Indian middle class and also by various political parties treats every failed business as criminal fraud, dishonesty, misappropriation and even breach of trust. Daggers are drawn out for each and every failed businessman and also everyone who had stood with him / her.

Indian society, government, parliament, judiciary and police system treats failure in business as a crime worse than rape and murder. A person accused of rape and murder must have benefit of doubt and must never be punished unless there is criminal intent (mens rea). No such benefit of doubt for a failed entrepreneur who is subject to presumptive prosecution. He / she is presumed to be guilty without any opportunity to prove his innocence – like in the case of dishonored cheque. For him / her criminal intent is presumed even though it is obvious that the cheque bounced because of business failure caused by reasons beyond his / her control.

The net result of this pillorying of every failed businessperson is that Indian society is now (a) looking for extra safety or avoiding all risks in business and (b) avoiding business all together. Designing a new product is risky, so let us copy; manufacturing is risky, so let us import and trade – that just about sums up the mindset of Indian business class in past decade. And to cap it all is the mindset of selling off the family business and living on interest or investment in shares. When the parliament, government, judges and police are all on the side of moneylenders, what can be better than becoming a moneylender oneself? Of course, the best is to take up a government job or job in a multinational corporation. In other words, India has become a nation of parasitic job seekers and money lenders who demand harder and harder work from entrepreneurs and other productive sections of society under all circumstances; who will not let go off their pound of flesh even when the productive person is dying of hunger. The moneylenders and the ones in safe jobs have been flogging the horse hard for every misstep. Now the horse is tired and has almost given up. The horse has been flogged to its limits and its offspring do not wish to pull the cart anymore.

Honourable Prime Minister has talked about self-reliant India and also stressed on reducing dependence on People's Republic of China (PRC). India does not import either crude oil or essential agricultural commodities from PRC. Yet, India has a huge trade deficit with PRC. Of all countries with whom PRC has a positive trade balance, India ranks third. In 2018, PRC had a positive trade balance of about USD 58 billion with India. No other developing country has such a large trade deficit with PRC.

The following table gives the top ten countries who buy more from PRC and sell less to PRC.

Country With Whom PRC has +ve Trade Balance	Trade Balance with PRC	GDP Current Pr.	Trade Surplus
	USD Billion	Int. Dollars Billion	Per Cent of GDP
United States	323.7	20,580.3	-2.4%
Netherlands	60.8	970.5	10.9%
India	58.0	10,413.6	-2.1%
United Kingdom	33.1	3,065.0	-3.9%
Mexico	30.1	2,575.2	-1.9%
Vietnam	19.9	919.8	1.9%
Poland	17.3	1,215.4	-1.0%
Bangladesh	16.8	764.0	-2.6%
Spain	16.3	1,854.0	1.9%
Singapore	16.2	579.4	17.2%

Data relates to year 2018

Source: ACLA based on WITS, World Bank and IMF, World Economic Outlook database

India's trade deficit is about 2.1% of her GDP. Much of it can be explained due to high expenditure in foreign exchange on petroleum products. However, the trade deficit of India with PRC cannot be explained without admitting **failure of Indian business eco-system**. China and India, both are surplus in manpower. In terms of raw materials also India and PRC are largely on equal footing. Five decades back, India had better manufacturing industry as compared to PRC. In past decades, Chinese industry has moved far ahead of India and is now able to compete better against India due to the better support that the industry in PRC enjoys.

From the accounts of experiences of Indians who have returned from PRC, it seems that in PRC industry is seen as crucial for national growth. Preventing failure of industry is considered collective responsibility of municipal, state, and federal governments as well as the entrepreneur and other stakeholders. From anecdotal

evidence available to us, start-up failure rate in PRC is almost negligible as against 90% in India.

Talking of anecdotal evidence, let us recount the experience of one of our clients (and friend). About two and a half decades ago, he did B. Tech. (Electrical Engineering) from IIT Bombay and went to the USA for his postgraduate studies. In the USA, his classmate and friend was a Chinese. Both of them did their masters project on the same field of one emerging technology. Both returned to their respective countries. After returning the Chinese was called for a meeting with senior bureaucrats about the new technologies he had picked up while studying in the USA. Based on his briefing, the postgraduate engineer was asked the resources and market support that he would need to implement the project. Today (about two decades later) the company owned by the said Chinese man is the world leader in the said field. On the other hand, our friend in India returned to his father's industrial unit. Needless to say that India does not have the concept of asking returning technocrats about technologies in their bags. To cut a long story short, our Indian friend's turnover in the same field (which he studied with his Chinese friend in the USA) is not worth mentioning. For past few years, he has been pushing to get some government approval or the other. It does not matter in India that the field is of strategic importance and can enhance capabilities of critical military equipment including battle tanks.

The sad story is not an isolated incident. As a country, India has failed to make use of capabilities of her engineers. If at all there have been some success stories like in software, it is largely despite the government and the adverse eco-system; not because of any positive encouragement from the state machinery. A friend once said that in India an entrepreneur is assumed to be a criminal fit to be hanged unless proved otherwise. An entrepreneur's daily fight is to keep proving that he / she is not a criminal. And God forbid, if the business fails and he / she runs out of money then no proof of innocence is to be even looked at; he / she must be first insulted and then lynched in full public view.

This is not about tragic life of some individuals but is a sad tragedy of wasted potential of a country which has been blessed with the best minds and most dynamic young people in the world. Indian middle class and state machinery must learn to accept that businesses fail; and every business collapse is more a failure of the supporting eco-system and less of the individual(s) heading or owning it. Indian middle class must also learn that interest is not a fundamental right and there may be instances when a lender has to lose even the principal.

Indian economy is already facing a situation when banks have more money than they can lend. Bankers are fearful of lending since there is no appreciation of risks involved in lending. Government of India is forced to seek foreign direct investment not because there is any shortage of savings and investible funds in India but because on one hand the Indian entrepreneur is tired and on the other hand the Indian banker has unrealistic expectations (100% success rate, personal guarantees, 100% backing of loans by collaterals etc.). It is like a rich man who owns several cars, but is forced to commute by bus because he does not know how to drive and because he cannot get a driver since he believes in the practice of hanging to death every driver who gets involved in any mishap / accident.

D. Criminalization of Cheque Bouncing – Context & Law

As mentioned earlier, the law for making cheque bouncing a criminal offence was not introduced to protect banks and other money lenders. However, in the past three decades, banks and other lenders have started taking recourse of taking blank / post-dated signed cheques as security. As on date, it is almost impossible to get any loan or facility (hire-purchase, lease, etc.) without the lender getting personal guarantees and also getting hold of signed cheques before disbursement. In other words, as and when any business in India funded by loan goes into difficulty, the entrepreneur must either dispose of his / her personal assets to bear the loss or should pack bags to spend two years in jail.

Considering the high business failure rate in India, it essentially means that a very large percentage of entrepreneurs have a sword hanging on their heads and face the prospect of spending years in jail. This may mean further adding to the overcrowded prisons of India. It also means that some of the most dynamic and high potential young (and also significant number of middle aged and old) persons will get exposed to criminals and will probably get trained in a life of crime. From the perspective of society, it is certainly not a desirable situation.

Reality is that entrepreneurs or other issuers of bounced cheques are not landing up in jails and crowding the already overcrowded prisons of India. It is because of two reasons – (a) emergence of lawyers who can defend their clients delaying the process through the hierarchy of courts (b) by and large judges as well as complainants believe in their heart that sending a person to prison for merely not having money is unjust; across the country, courts encourage compromises so that the accused does not have to go to jail.

Let us look at some key features of the law relating to cheque bouncing:

- **Intention of accused in not considered**. In any other criminal offence criminal intent is necessary for punishment – not so in case of cheque bouncing. Let us consider a hypothetical case. X is expecting payment from, say, Public Works Department Government of India and issues a cheque in anticipation to Y; for some reason the payment from Government of India gets into a dispute; cheque issued by X bounces; Y files complaint against X – judgment will be that X should spend two years in jail. Typically, the dispute with Government department will take more than ten years to resolve. Even if X wins the case against government and gets his payment, he will not be compensated for the two years that he would have spent in jail due to cheque bouncing caused by wrongful stoppage of his payment by officers of the Government department.

- **One need not issue the bounced cheque to be punished**. One may only be an officer in key position in a company which is going through financial troubles and one day there may be a police officer knocking on one's door. Example – A company, say, ABC Ltd. is in the business of exports, has taken a loan from a bank. ABC has shipped huge quantities to a country against LCs from a bank of that country. An outbreak of war in that country leads to dishonor of LCs issued by the bank of that country. The company goes into financial stress. Bank has in its possession blank cheques signed by the company's Managing Director. The cheques are presented by the bank and bounce. The company has one Managing Director and three Executive Directors. All four (the MD and the three EDs) will be punished and will need to go to jail for the cheques which bounced, even though the EDs had not signed the cheques or even dealt with the bank.

- **Force majeure is no defense**. In the examples given above, cheques bounced due to force majeure conditions. But, that will not save the unfortunate issuers and relevant officers of the concerned companies.

- **No benefit of doubt** – any accused in a criminal case is given benefit of doubt. But in case of offence of cheque bouncing, this principle of natural justice is dispensed with.

- **Bankruptcy is no defense**. In most civilized societies the moment a person throws up his / her hands and declares inability to pay debts, the state protects him / her and gives the person an opportunity to restart and rebuild

his / her life. This global practice of civilized societies does not apply in India. India's Insolvency and Bankruptcy Code (IBC) does not protect an issuer of bounced cheques. Initiation of insolvency proceedings puts moratorium on civil proceedings. It is a sad reflection on Indian legal system that proceedings related to cheque bouncing are not covered by section 14 of IBC.

- **Appeal is made extraordinarily difficult**. Typically, in a criminal case appeal is considered fundamental right of the accused. Not in case of offence of cheque bouncing! A person convicted of dishonor of cheque must first deposit about one fifth of the cheque amount to be able to appeal. If the convict in a cheque bouncing case has lack of funds (the reason why the cheque bounced in the first place), he / she has no right to appeal.

There can be no dispute with the fact that the law relating to cheque bouncing in India is indeed a **draconian one and violates all principles of natural justice** that are accepted universally in civilized societies across the world. It treats inability to pay as a criminal offence without any consideration about the reasons that might have caused the inability to pay.

It has been our experience that while holders of bounced cheques do want the money that is due to them, they do not wish to see the issuer go to jail. The accused in a cheque bounce case enjoys sympathy from all stakeholders including policemen, judges, lawyers and even complainants. Lawyers defending accused in cheque bouncing cases often resort to one or more of the following:

❖ **Go missing**! This may sound strange to anyone not used to India. But this is the easiest and the first defense. Summon and warrant from the court are brought by a junior policeman. Bribing the policeman can delay the trial for months or years. The policeman dutifully reports that the accused is not found at the address given in the summon / warrant. Honourable Supreme Court in a recent judgment said that half the cheque bouncing cases pending in India are pending on account of absence of accused.

> **6. One of the major factor, for high pendency is delay in ensuring the presence of the accused before the Court for trial. As per recent study, more than half of the pending cases, i.e. more than 18 lakh cases, are pending due to absence of accused.**

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- **File multiple applications**! Lawyers for the accused keep filing multiple applications on frivolous grounds. This can delay the legal process.

- **Manage court staff**! This is often done by the powerful and the rich. Case file goes missing from time to time and then case is transferred from one court to another.

- **Appeals and reviews** – this option needs deep pockets to be able to fund lawyers through trial court, court of appeals, High Court and finally Supreme Court. Also, as mentioned earlier, in case of appeal there is need to deposit one fifth of the cheque amount.

- **Compromise and compounding** – as the case keeps getting delayed, the complainant starts getting impatient. During the years that the process takes, at some point the accused gets money and is able to strike compromise. Notably, a compromise can be made at any stage. Even when the case has travelled all the way from trial to appeal to High Court to Supreme Court, the parties can compromise and close the matter.

There are no statistics available about conviction rate in cheque bounce cases. It seems that for the reasons cited above and also because the law in the matter is seen as essentially unjust and unjustifiably harsh the number of persons who go to jail for the offence of cheque bouncing is very low as compared to the number of cases that are filed.

Converting of the judicial system into collection agents has benefitted significant number of lawyers. But there is widespread exasperation among judges with their new role. Honourable Supreme Court has observed on more than one occasion that the "*offence under section 138 relates to a civil wrong*".

> **18. In *Meters and Instruments Private Limited (supra)*, this Court had also observed the nature of offence under Section 138 primarily relates to a civil wrong. While criminalising of dishonour of cheques took place in the year 1988 taking into account the magnitude of economic transactions today, decriminalisation of dishonours of cheque of a small amount may also be considered, leaving it to be dealt with under civil jurisdiction.**

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Even though it is not common for the Honourable Supreme Court to suggest or recommend changes to be made to a law passed by the Parliament, in the case of offence of cheque bouncing the Court suggested that decriminalization of dishonours of cheque may be considered.

E. Conclusions and Recommendations

To conclude, one may sum up as follows:

- The law related to cheque dishonor is a draconian one and is against the principles of natural justice since it gives no benefit of doubt to the accused.
- The law related to cheque bouncing is harsh and unjust.
- Principle of vicious liability of directors and key management personnel is unfair.
- Treating inability to pay as a crime is against all theories of jurisprudence and punishment.
- Objective of the law relating to cheque bouncing was to promote the use of cheques. The objective is now outdated and is against the declared policy of promoting digital payments.
- The law related to cheques was never intended to protect moneylenders (banks, NBFCs, private lenders, credit card companies, hire purchase companies etc.). Use of signed blank / postdated cheques by moneylenders is in violation of the original objectives of the law.
- There are many laws for protection of moneylenders, while there are none for protection of borrowers. This has distorted the balance between the parasites (who live off the hard work done by borrowers) and the productive sections of the society.
- From a macro-economic perspective, India needs to grow her manufacturing capabilities and needs to encourage more entrepreneurs who are willing to take risks. The law relating to cheque bouncing is a big dampener in this regard.
- Payment of interest and repayment of principal by any entrepreneur or businessman is dependent on various external conditions and circumstances.

It is unfair to ignore all the circumstances and hold the entrepreneur personally responsible for all that goes wrong.

- If India has to grow her design and manufacturing capabilities, the country must learn to share risks with her entrepreneurs. Indian middle class (depositors in banks), moneylenders, governments must accept that businesses often fail and a failed entrepreneur is an experienced entrepreneur who must be supported and encouraged to restart. Putting every failed entrepreneur in prison will destroy the country's industry.

- India must aim to improve her trade balance with all countries, but especially with People's Republic of China. This cannot be done till the entrepreneurs are treated with respect and not treated as potential criminals.

In view of the above, **we wholeheartedly support decriminalization of cheque bouncing**. While complete and unconditional decriminalization with retrospective effect is the right step, we suggest the following in case the Parliament and the Government may consider the following suggestions / recommendations:

- ✓ No moneylender (bank / NBFC / private lender / hire purchase company / credit card issuer) should be allowed to file a complaint under the Negotiable Instruments Act (NI Act). In other words, action under NI Act may be initiated only for an operational debt and not for a financial debt.

- ✓ It should be a criminal offence for anyone to have in his possession any signed cheques that are either undated or are postdated.

- ✓ Criminal intent must be present at the time of issue of cheque for the offence of dishonor of cheque to be considered a criminal offence. Mere inability to pay should not be sufficient ground for prosecution.

- ✓ Force Majeure should be statutorily recognized as a valid defense for dishonor of a cheque.

- ✓ Section 14 of Insolvency and Bankruptcy Code (IBC) should be amended to specifically include proceedings under Negotiable Instruments Act (NI Act) under the moratorium under IBC.

- ✓ IBC should be amended to specifically put an end to all proceedings under NI Act against company / firm and its directors / partners in case of resolution or liquidation or discharge of bankruptcy.

- ✓ Attempts should be made to discourage use of cheques by reducing the statutory protection available to holders of cheques. Instead digital payments should be encouraged.

In addition to the above, we suggest that the Parliament pass **a law limiting the enforceability of personal guarantees** by all moneylenders except in case of fraud or forgery or misappropriation of funds or such other criminal acts. No entrepreneur should be forced into becoming a destitute just because his / her business fails. India needs to learn the concept of limited liability. It should not be a routine matter for a moneylender to lift the corporate veil. This should be done only under exceptional circumstances when the promoter of the defaulting company has indeed indulged in criminal acts.

Decriminalization of cheque dishonor and non-enforceability of personal guarantees will go a long way in unleashing the entrepreneurial spirit among Indian youth and will help the country emerge as an economic powerhouse in the years to come.

Anil Chawla
Senior Partner
Advocate & Insolvency Professional

Yogita Pant
Partner
Advocate & Insolvency Professional

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