

Punishment on Bouncing of Cheques

Report No. 44

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The Negotiable Instruments Act 1881, defines cheque as “ cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.” The cheque is, therefore, explicitly defined as a bill of exchange, drawn on a specified banker which contains an unconditional order in writing drawn on a specified banker, signed by the drawer, requiring the banker to pay on demand a sum certain in money to or to the order of, a specified person or to the bearer, and which does not order any act to be done in addition to the payment of money.

Cheque is payable to or to the order of a certain person or bearer. According to law, a person may not necessarily be a natural person. It can as well be a corporate body, constituted or registered under law, capable to enter into contract and carry on its functions or business.

The cheque is one in which there is a drawer, a banker and a payee. On presentation of the cheque, the banker has either to honour the cheque or refuse its payment on any valid ground. Besides, other grounds, the cheque is dishonoured when there is insufficient amount available in drawer’s account or not drawn properly to hinder the honouring of the cheque presented which is generally called bouncing of a cheque.

Before 1997, bouncing of cheque, had been a civil wrong in Pakistan for which the affectee could

file a suit in civil court for recovery of the cheque amount or deal with the drawer in any manner. However, the position changed in respect of financial institutions and banks on the enactment of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act 1997 (XV of 1997) by which the bouncing of cheque is made a criminal offence liable to punishment. According to Sub-section 4 of Section 19 of the said Act, whoever dishonestly issues a cheque which is dishonoured shall be punishable with imprisonment which may extend to one year or with fine or both. The aforesaid Act was later repealed by the Financial Institutions (Recovery of Finances) Ordinance 2001 (XLVI of 2001). The new Ordinance contains a similar provision in Sub-section (4) of Section 20 which reads as follows -

“ Whoever dishonestly issues a cheque towards re-payment of a finance or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to one year, or with fine or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque”.

The above provision specifically applies in the cases where the cheque for recoument of loans in favour of the financial institution is issued but dishonoured on account of lack of fund in the drawer's account and thus to be treated as having dishonestly issued a cheque towards re-payment which is dishonoured on presentation.

It is obvious that a person who dishonestly issues cheques towards repayment of finance or fulfilment of obligations to the financial institutions or banks is made liable for punishment. But no such provision exists in any law if the general public is cheated or defrauded through issuance of cheques which are never honoured. Persons who indulge in such nefarious practice must be penalized under criminal law besides facilitating the public to recover the amounts due. In order to penalize the unscrupulous persons for their dishonest acts of issuing cheques for meeting their promises or obligations which are dishonoured on presentation on account of lack of deposits in their accounts, it is expedient that a new Section be added in the Pakistan Penal Code to provide punishment for such acts.

Commission's deliberation

The Secretariat placed the proposal before the Commission in its meeting held on 18 May 2002 and the Commission taking serious notice of ever increasing complaints and litigations in courts due to bouncing of cheques in private transactions, recommended the addition of a new offence of bouncing of cheque in the Pakistan Penal Code reading as follow:

“489-F Whoever dishonestly issues a cheque towards re-payment of a loan or

fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years and with fine, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque”.

The Commission further, recommended a consequential amendment in the Code of Criminal Procedure 1998 for making such offence cognizable by police, non-bailable and compoundable. A draft Ordinance containing the proposed amendment at Appendix -I is referred to the Government for amending the Pakistan Penal Code.

Appendix -I

AN ORDINANCE

further to amend the Pakistan Penal Code 1860 and the Code of Criminal Procedure 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code 1860 (Act XLV of 1860) and the Code of Criminal Procedure 1898 (Act V of 1898) for the purpose hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the Fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

1. **Short title and commencement.** --(I) This Ordinance may be called the Criminal Law (Amendment) Ordinance 2002.

(2) It shall come into force at once.

2. **Insertion of new Section 489-F, Act XLV of 1860.** In the Pakistan Penal Code 1860 (Act-XLV of 1860), after Section 489-E, the following new Section shall be inserted, namely;-

“ **489-F Dishonestly issuing a cheque.-** Whoever dishonestly issues a cheque towards re-payment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years and with fine, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank

was at fault in not honouring the cheque.”.

3. Amendment of Section 345, Act V of 1898.- In the Code of Criminal Procedure 1898 (V of 1898), hereinafter referred to the Criminal Code, in Section 345, in Sub-section (1), in the table, after the entries relating to offence of “ Criminal breach of contract of service”, the following entries shall be inserted, namely;-

Dishonestly issuing a cheque for repayment of Loan.	489F.	The person in whose favour issued.
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4. Amendment of Schedule II, Act V of 1898.- In the Criminal Code, in Schedule II, after the entries relating to Section 489E, the following new entries shall be inserted, namely:-

1.	2.	3.	4.	5.	6.	7.	8.
“489F	Dishonestly issuing a cheque for repayment of Loan	Ditto	Ditto	Ditto	Comp- oundable	Imprisonment of either description for 3 years or with fine or both.	Magistrate of the first class

President of Pakistan