CHAPTER I

INTRODUCTION

“Mercantile usage is the raw material, mercantile law is the manufactured article”,
- Sir McKenzie Chalmers

The law relating to negotiable instruments is the law of commercial world legislated to facilitate the mercantile commercial activities, thereby making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily exchangeable from one person to another as well as easily transferable from one banking institution to another. The above quoted statement made before the Bills of Exchange Act, 1882, brings out clearly the process of evolution of mercantile law which includes the law of negotiable instruments. The mercantile community found in such instruments an easy mode of payment of money by way of endorsement and delivery or by mere delivery of such instruments. With the expansion of trade and commerce, negotiable instruments have assumed international importance. In the absence of such negotiable instruments, the trade and commerce activities, in the contemporary world, are likely to be adversely affected as it is impracticable, infeasible and unworkable for the trading community to carry with it the bulk of the currency in force. Negotiable instruments are in fact the instruments of credit being convertible, exchangeable and redeemable on account of legality of being negotiated and are easily passable from one hand to another, from one state to another, from one country to another. Out of the various kinds of negotiable instruments recognized by law, cheque is considered, by far, one of the most secure and reliable device of payment throughout the world, particularly in the sphere of commercial transactions one cannot imagine survival without this negotiable instrument.

1 Introduction to the First Edn. of Chalmers' Negotiable Instruments Act, at 9.
1.1 Introduction to the Law Relating to Negotiable Instruments

The law relating to negotiable instruments is not the law of one nation or of one particular demographic area, it is the law of the commercial world in general, for, it consists of certain principles of equity and usages of trade which general convenience and commonsense of justice had established to regulate the dealing of merchants and mariners in all the commercial countries of the civilised world. Even now the laws of several countries in Europe are, at least so far as general principles are concerned, similar in many respects. Of course, on questions of detail, different countries have solved the various problems in different ways, but the essentials are the same, and this similarity of law is a pre-requisite for the vast international transactions that are carried on among the different countries.²

1.1.1 Negotiable Instrument is a ‘Thing’

A negotiable instrument is in more than one sense a ‘thing’. In deciphering what is meant by a ‘thing’ under law, we must on one hand avoid the metaphysical niceties about the conception of ‘thing’, and on the other, the peculiar conception of the word in England, as in the phrases, ‘things in possession’ and ‘things in action’. In jurisprudence, a ‘thing’ necessarily denotes an object of rights. In that sense every instrument is a ‘thing’, in so far as the paper on which it is written is concerned. It is not only in that sense is a negotiable instrument a ‘thing’ also in the sense that it is a physical embodiment of rights. A person lawfully getting possession of such an instrument acquires title to it, and the same cannot be said of other instruments. Again, it represents money and possesses all the characteristics of money which it represents. For example, it is not tainted by any defect or fraud in the source from which it flows, so long as its acquisition is bonafide and for value. It also passes through delivery like cash, and the person

in possession of the instrument can sue on it in his own name. It also possesses the characteristics of a contract as it embodies either an order or a promise to pay money. The capacity of the parties to it, the liability of persons on it and the discharge of such liabilities are governed mostly by rules belonging to the domain of contracts. It is also regarded as a chattel; and being so, it has been held that the transfer of such instruments should be regulated by the law of the place where the transfer takes place.³

1.1.2 Meaning of the Term ‘Negotiable’

The term ‘Negotiable’ is one of classification and does not of necessity imply anything more than that the paper possesses the negotiable quality. Generally speaking, it applies to any written statement given as security, usually for the payment of money, which may be transferred by endorsement or delivery, vesting in the party to whom it is transferred or delivered a legal title on which he can support a suit in his name. The term signifies that the note or paper writing to which, it is applied possesses the requisites of negotiability.⁴ A negotiable instrument is one, therefore, which when transferred by delivery or by endorsement and delivery, passes to the transferee a good title to payment according to its tenor and irrespective of the title of the transferor, provided he is bona fide holder for value without notice of any defect attaching to the instrument or in the title of the transferor, in other words the principle nemo dat quod non habit does not apply.⁵

1.1.3 Purpose and Origin of Law Relating to Negotiable Instruments

The introduction of negotiable instruments owes its origin to the bartering system prevalent in the primitive society. The source of

³ Ibid.
⁵ Ibid.
Indian law relating to such instruments is admittedly the English Common Law. The main object of the Act was to legalise the system by which instruments contemplated by it could pass from one hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of the leading rules of law relating to the negotiable instruments. The Act intends to legalise the system under which claims upon mercantile instruments could be equated with ordinary goods passing from hand to hand. It has, always to be kept in mind that section 138 of the Act creates an offence and the law relating to the penal provisions has to be interpreted strictly so that no one can ingeniously and insidiously or guilefully or strategically be prosecuted.⁶

An attempt at the codification of mercantile usages was made in France as early as 1818 and the French Commercial Code was later adopted as a model by other countries on the continent. In England, the movement for codification was not started till 1880 when Sir McKenzie Chalmers drafted a bill on the subject. This was enacted as the Bills of Exchange Act, 1882. In India, an effort in the same direction was made earlier, in 1867, when the (third) Indian Law Commission prepared a bill. But, for various reasons it was kept in cold storage for a number of years. In 1879 Mr Arthur Phillips, the then Law Secretary and a member of the Calcutta Bar, redrafted the bill. Criticisms were invited on it from banks, chambers of commerce and leading merchants. This bill, after passing through Select Committees more than once, was again referred to a new Law Commission in 1879. The recommendations of the Commission were considered by another Select Committee and eventually the bill, in a modified form, became the Negotiable Instruments Act, 1881.⁷

The principal source for codification of this law both in England and in India was the English common law of contracts as modified by the law merchant. But, curiously, there has been a considerable

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⁶ AIR 2001 SC 1161.
⁷ Law Commission of India — Report No. 11 (September, 1958), on the Negotiable Instruments Act, 1881.
divergence, whether intended or not, between the two Acts though the raw material for both was the same. The arrangement of the sections in the English Act is more logical and the principles enunciated therein are more comprehensive than in the Indian Act.\footnote{Ibid.}

It is submitted by the researcher that to achieve the objectives of the Negotiable Instruments Act 1881, the legislature has, in its perception and wisdom, thought it proper and appropriate to make such provisions in the Act, for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedures in case the obligations under the instruments are not honoured and discharged on time. The Parliament enacted sections 138 to 147 of the Negotiable Instruments Act to enhance the acceptability of cheques and to safeguard the payees from mischievous drawers in case of dishonour of cheque by compelling them to face criminal prosecution which may ultimately culminate in imposition of fine extending to double of the cheque amount besides imprisonment extending upto two years, at the same time providing adequate safeguards to prevent harassment of honest and bonafide drawers also. The laws relating to the Act are, therefore, required to be read, construed and interpreted in the backdrop of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for redressal of the grievances to the litigants. Endeavours to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities, ultimately affecting the smooth and unobstructed running of the economy of the country.

1.1.4 Object of Incorporating Section 138

The Negotiable Instruments Act was enacted and Section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque which is a negotiable instrument, is concerned. Section 138 of the Act makes
a civil transaction to be an offence by fiction of law. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person is returned by the bank unpaid either because of the amount or money standing to the credit of that person being insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account, such person, subject to the other conditions, shall be deemed to have committed an offence under the Section and be punished for a term which may extend to one year or with fine which may extend to twice the amount of cheque or with both. To make the dishonour of the cheque as an offence, the aggrieved party is required to present the cheque to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier and the payee or the holder in due course of the cheque makes a demand for payment of the cheque amount by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and drawer of the such cheque fails to make the payment of the amount within 15 days of the receipt of the said notice. Section 139 refers to presumption that unless the contrary is proved, the holder received the cheque of the nature referred to under Section 138 for the discharge in whole or in part or of any debt or other liability. Section 140 restricts the defence in any prosecution under Section 138 of the Act and Section 141 refers to the concept of vicarious liability pertaining to cheques issued by partnership firms and companies. Section 142 provides that notwithstanding anything contained in the Code of Criminal Procedure no court shall take cognizance of an offence under the Section except upon a complaint in writing made by the payee or as the case may be, the holder of the cheque and that such complaint is made within one month of the date on which the cause of action arose under clause (c) of proviso to Section 138 of the Act.9

1.2 Problem Profile

Apart from the validity, sanctity and applicability of the above bare mandates of statutory law, there are some larger issues which could be and should be appropriately addressed in the context of the topic. It may be recalled that Chapter XVII comprising sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith and build confidence in the efficacy of banking operations and credibility in transacting business through negotiable instruments by minimizing cash transactions. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for stringent penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of genuine drawers. It may also be pertinent to add here that when the offence was originally inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is thus quite manifest and discernible that the legislative purport and intent behind incorporation of the provision of section 138 and the subsequent amendment with regard to enhancement of punishment, was to provide a strong and efficacious criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive deterrent nature, the provision for imposing a fine which may extent to twice the amount of the cheque serves a compensatory purpose. What must be remembered, reiterated and re-emphasised is that the dishonour of a cheque can be best described as a regulatory offence that has been put into place to serve the public interest in ensuring the reliability of these instruments of credit. The immediate impact of this offence is usually confined to the private parties involved in commercial transactions but in the broader
perspective the impact is stretched out to the entire mercantile society at large.\(^\text{10}\)

However, whatever be the law, we cannot close our eyes to a hard reality that the incidence of dishonour of cheques has not reduced because the law has not been implemented with same seriousness and fervour with which it had been enacted, nor the Courts are ensuring that the trials of these cases take place in a summary manner as desired and intended by the legislature without putting complainant and accused on equal footing. Today, the complainant being holder of the cheque gets more harassed than the accused in pursuing a complaint under Section 138 of the Negotiable Instruments Act, because of the fact that every summoning order is assailed on one or the other ground and the complainant is forced to contest the legality of orders of the Magistrate in cases under Section 138 at the very initial stage putting complainant to a greater ordeal and disadvantage. Further it is imperative to note that the summoning orders are not assailed actually because there is a patent illegality in the same rather the doors of the revisional court are knocked by the accused just to delay and constrict the proceedings before the trial court. The harsh and undeniable reality is that the statutory rules and procedures also fall flat before such dilatory tactics because in our democratic judicial set-up, the accused cannot be precluded, restricted or debarred from agitating and pleading his defence at any stage. In all cases, complainants are not the companies rather in most of the cases complainants are individuals and they have to fight an unequal legal battle against companies, who have enough funds and resources to spend on litigation and charge it to the company account. No effort is made by these corporate bodies to compromise the matter by paying off the cheque amount because the legal brains working on the rolls of such companies know very well that not less than a couple of years would be consumed at the trial court level itself for final adjudication of the matter. It is a matter of common knowledge that when companies are floated and public issues

\(^{10}\) Ibid.
are brought, huge advertisements are issued giving big names as directors and promoters of the company. These names are the names of successful CEOs or directors who have touched zenith in other fields. Due to these names at the very inception and formation of company, when there is no wealth or property of the company, the shares of the company are sold at a premium promising big business and success. Once money is mopped up from the public, in all those cases where the companies were created only for the purpose of mopping up hard earned money of public or to befool them, it is found that those big names disappear all of a sudden and in almost every litigation those directors who formed part of the core of the company and gave promises that the company would do roaring business quietly disappear from the scene or take a plea that they were not incharge and responsible for business of the company at any point of time. This is how the problem arises. While the public stands cheated, the persons who had mopped up wealth and pocketed the public wealth are not prepared to take responsibility of the monetary loss occasioned to the innocent stakeholders.11

The criminal justice system is essentially an instrument of social control; the civilised society considers some behaviours so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the job of the agencies of justice to prevent these behaviours by apprehending and punishing transgressors or deterring their future occurrence. Although society maintains other forms of social control, such as the family, school, and church, they are designed to deal with moral, not legal, misbehaviour. Only the criminal justice system has the power to control crime and punish criminals. So, the main objectives of the criminal justice system are to prevent the occurrence of crime, to punish the transgressors and the offenders, to rehabilitate the transgressors and the criminals, to compensate the victims as far as possible, to maintain law and order in the society and to deter the offenders from committing any criminal act in the future.

11 2010(7) RCR (Criminal) 1484.
Of late, the relevance of our justice system—both substantive and procedural—a replica of the British colonial jurisprudence, is being seriously questioned. Perhaps the criminal judicial system is based on the laws that are arbitrary and operate to the disadvantages of the poor. They have always come across as law for the poor rather than law of the poor. It operates on the weaker sections of the community, notwithstanding constitutional guarantee to the contrary. There are hardly any people to advocate for the new laws to help the poor, there are practically none to pressurize the government and the legislature to amend the laws to protect the weak and the poor. Even after five decades of independence, no serious efforts have been made to redraft penal norms or to radicalize punitive processes. The criminal justice system is cumbersome, expensive and cumulatively disastrous. The poor can never reach the temple of justice because of heavy costs involved in gaining access and the mystique of legal ethos. The hierarchy of courts, with appeals after appeals, puts legal justice beyond the reach of the poor. Making the legal process costlier is an indirect denial of justice to the people and this hits hard on the lowest of the low in society. In fact, the legal system has lost its credibility for the weaker section of the community. Of course, the judiciary in recent years has taken a lead and has come forward with a helping hand to give some relief to the victims of criminal justice in a limited way.\(^\text{12}\)

Some of the recent developments that have taken place during the last few years in our judicial delivery system to seek redress and accord justice to the poor are worth mentioning. The importance of these developments to the delivery system of justice can’t be ignored. They have revolutionized our judicial jurisprudence and will go a long way in giving relief to the large masses and the common man. Criminal law, which reflects the social ambitions and norms of the society, is designed to punish as well as to reform the criminals, but it hardly takes any notice of by product of crime—i.e. its victim. The guilty man is lodged, fed, clothed, warmed, lighted, and entertained in a model

cell at the expense of the state, from the taxes that the victim pays to the treasury. And, the victim, instead of being looked after, is contributing towards the care of prisoners during his stay in the prison. In fact, it is a weakness of our criminal jurisprudence that the victims of crime don’t attract due attention.¹³

The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity, uprightness and honesty of the parties. In our country, in a large number of commercial transactions, it has been noted that the cheque has been issued merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions has been eroded to a large extent over a period of time. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the true and genuine claim of the payee. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions.¹⁴

Viewed from another perspective, the efficacy of enactments relating to dishonour of cheques have to be weighed and construed in the light of the existing socio-economic scenario of our country. The over-burdened judicial infrastructure in this country is performing under great stress. Poor judge population ratio, stifling working conditions, lack of adequate facilities to judicial officers and problems of like kind get compounded when new laws enacted by the legislature bring in additional burden of cases without corresponding addition to the infrastructure to take care of the impact which such legislations

¹³ Ibid.
would have on the already overworked judicial system. One of the most substantial, discernible and prolific contributions to the existing litigation in the contemporary time has been on account of a huge bulk of cases filed under section 138 of the Negotiable Instruments Act. Cases running in gigantic numbers are pending in different courts in every corner of the country especially in urban areas which have virtually choked and throttled the system by sheer magnitude of the work and by the tremendous effort involved in their adjudication and final disposal. Alternative Dispute Redressal (ADR) methods adopted for the disposal of these cases, like daily lok adalats, mediation and conciliation proceedings have made little impact on the mounting arrears so much so on account of the inflow of a large number of cases, a section of the bar is specializing in and devoted to only this branch of law. Almost all banking institutions and commercial set-ups have a specialized legal section manned by law graduates having expertise in cheque bouncing cases and they are paid handsomely just for two things – either to expedite the trial and compel the drawer of the cheque to come to negotiable terms or to delay the trial on one ground or the other for the purpose of buying time for repayment of the cheque amount.15

With the comprehensive progress and economic development of a nation, society as a whole prospers, however, growing complexities have forced the man to find out and explore some new and innovative modes of convenience. The exchange of cash has been immensely replaced by cheque which undoubtedly is a very convenient, easy and handy mode of payment but its use (rather to say misuse) has also led to disasters. It cannot be lost sight of, that commercialization and extensive business transactions have led to forgeries and cheating in various ways, and one such way is frequent dishonouring of cheques with malafide intention. In such situation not only people lose faith in cheques but even smooth running of business is adversely affected sometimes leading to bankruptcy of a concern and sometimes even

15 Supra Note 9, at 10.
costs a person earning of whole of his life. To avoid such eventualities, the legislature in its utmost wisdom has incorporated section 138 in Negotiable Instruments Act, 1881 by amendment in 1988 which not only punishes a dishonest and mischievous debtor who finds ways and means to avoid payments but sometimes also saves genuine debtor from unscrupulous tactics adopted by the holder of the cheque (once he has made the payment but had also issued cheque as an advance or as a security or in anticipation of his not being able to make the payment). However it is basically to facilitate the genuine creditors who trust upon the drawer and enter into business transaction with assurance that he shall be getting his money back in time. Section 138 of the Act comes into picture where payment insured by issuing a cheque is not honoured.\textsuperscript{16}

This is a provision dealing with a criminal offence and provides punishment for mischievous drawers of the cheque, yet the modern approach is to use it as an indirect but effective tool for refund of money. The general practice of recovery of amount through criminal prosecution is nothing but misuse of provision of section 138 of the Act that punishes the offender and does not aim at recovery of the amount, which is the ambit of civil courts. Infact section 138 of the Act has been considered to be cheaper, quicker and easier mode to get recovery of dues as the criminal courts practically play an important role in getting the payment from offender for the party launching the prosecution by making efforts and getting the offence compounded.\textsuperscript{17}

In the last decade, the litigation under section 138 of the Act has multiplied manifold. Cheques are in immense use instead of cash as mode of payment. Increase of commercialisation, extensive business opportunities, stepping in of foreign companies, banks, finance companies, cellular companies etc. has accelerated this litigation pertaining to dishonouring of cheques. With the increasing use of cheque, its bouncing, forgery and other kinds of misuse have also come

\textsuperscript{16} \textit{Ibid.}
\textsuperscript{17} \textit{Ibid.}
to light. This provision in recent times has in fact been adopted as an indirect mode of recovery of the cheque amount as well as other outstanding dues. Penal provision under section 138 of the Act was incorporated with the basic aim of punishing dishonest debtor who used to issue cheque without any fear and sense of responsibility. Sometimes the fear of punishment which includes imprisonment and fine compel the drawer to fulfill unjust demands of the complainant whereas on the other hand, creditor finds a shorter and simpler method to get his money back without going through the dilatory process of filing suit for recovery in civil court, without much physical and mental agony and as well as by avoiding payment of ad-valorem court fees.\textsuperscript{18}

Initial changes brought about in the year 1988 in Negotiable Instruments Act by which section 138 was incorporated and further far-reaching amendments in the year 2002 though tried to simplify the provision and procedure and to stall the delay but still this offence is so technical that on each and every step, litigant has to remain very vigilant and has to proceed in a strict methodological manner. Sometimes a morsel of ignorance and bonafide mistake, for example in calculation of time limit for issuance of legal demand notice or in discerning and applying the principle of vicarious liability while prosecuting partners of firm or directors of companies, makes out a legal ground to reject and dismiss the otherwise genuine case which causes grave injustice and harassment to parties.\textsuperscript{19}

As per the researcher’s view, different and contradictory interpretations of various provisions by different higher courts have created obscurity for the trial courts as to how the matter should be dealt with so that no prejudice is occasioned to any of the parties. Inconsistent judicial views with regard to some crucial parameters viz. territorial jurisdiction where a complaint under section 138 of the Act can be instituted, summary procedure whether mandatory or not, stage at which compounding may be permitted etc. have proliferated

\textsuperscript{18} Ibid.
\textsuperscript{19} Supra Note 9, at 12.
uncertainty in final decisions, thereby benefiting neither the complainant nor the accused nor the judicial system as a whole. In the contemporary scenario, this provision under section 138 of the Act has become so vital that it cannot be expected under any stretch of imagination that no litigation under this provision would be pending adjudication in any court in India situated even in the remotest of areas.

The object is also to avoid the malign trade practice of frequently or intentionally issuing cheques without sufficient funds. The legislature has also added safeguards in the provisions that prior to initiation of criminal prosecution the drawer can pay the cheque amount and settle the dispute within fifteen days of receipt of notice from the aggrieved party. Number of presumptions under sections 118 and 139 of the Act further fortify the case of complainant which benefits him not only to prove some facts but where the said presumptions are not rebutted by drawer, it may go against him. The recent amendments have impressed more upon the trial of the offence under section 138 of the Act in a summary manner. The procedure is simplified and evidence can be adduced through affidavits and memos or certified copies of bank record can be accepted without bothering the officials of the concerned bank to come to the court to prove the same. Different modes of service of accused and witnesses, time bound trial and to condone delay in filing of the complaint are the major amendments that have advanced the interest of justice. The court can ignore super technical and frivolous pleas of accused in order to enforce the real object and purpose behind introducing these penal provisions.20

After all bouncing of a ball may be a moment of fun and joy but bouncing of a cheque may have the consequence of putting its drawer behind the bars.

20 Supra note 9 at 8.
1.3 Objectives of the Study

In the backdrop of the above perspective, the present study has been undertaken with the objective of in-depth contemplation and deliberation upon the following points:

- Need for strict implementation of penal provisions with a deterrent hand, keeping in view the burgeoning cases of dishonouring of cheques and escalating trends of litigation under Section 138 of the Act.

- Core problem areas in the spheres of dilatory procedure, ineffective implementation of existing legal framework, bulk pendency and exponential increase in fresh institution of cases, especially in light of the fact that the provisions pertaining to dishonouring of cheque under the Act, even after extensive amendments, have failed to serve the objective of the statute.

- The law relating to dishonouring of cheques is inherently technical in nature and ambit; therefore taking the benefit of technical infirmities, even the most unscrupulous debtors escape unpunished leaving the destitute creditors with no other option but to seek long drawn remedy of recovery before the civil court, that too within the statutory period of limitation of three years and on payment of ad-valorem court fees;

- The compensatory aspect is being given precedence over the punitive aspect due to which the debtors can very well comprehend and surmise that even after lapse of few years before the trial court, they would get an opportunity to escape unblemished by just offering to make the payment of the cheque amount to the complainant;

- This protective legislation is not only being misused by drawers but also by holders of cheques and holders in due
The continuous misuse of cheques as instruments of credit, has posed a real threat to the sustainability, credibility and existence of negotiable instruments in the commercial world. The law relating to dishonour of cheque, being closely and overpoweringly guarded by varied technical aspects at every stage, has failed to protect and serve the interests of a common man. It is not only the drawer of the cheque but also the holder and holder in due course of law, who are indulging in active misuse of this protective legislation.

The judicial view with regard to compensatory aspect and compounding of offence at any stage has diluted the deterrent effect of the statutory provisions which were otherwise purported to be strongly punitive in nature.

In the light of the above core issues, a strong need has arisen to address these problems urgently and suggest reformatory measures so that the provisions pertaining to dishonour of cheque in India are not reduced to mere dead letters of law.

1.4 Hypotheses

The study is based on the following hypotheses:

- The continuous misuse of cheques as instruments of credit, has posed a real threat to the sustainability, credibility and existence of negotiable instruments in the commercial world.

- The law relating to dishonour of cheque, being closely and overpoweringly guarded by varied technical aspects at every stage, has failed to protect and serve the interests of
a common man.

- It is not only the drawer of the cheque but also the holder and holder in due course of law, who are indulging in active misuse of this protective legislation.
- The judicial view with regard to compensatory aspect and compounding of offence at any stage has diluted the deterrent effect of the statutory provisions which were otherwise purported to be strongly punitive in nature.

1.5 Research Methodology

The methodology which has been adopted for the present research work is mainly based on doctrinal method, thereby involving study and analysis of literature relating to law of dishonour of cheque in India. The study is inherently based on the edifice of critical appraisal of plethora of judicial pronouncements with regard to various aspects and technicalities related to dishonour of cheque. The research takes an insight into the procedures and penalties prescribed by the statute, the amendments made thereto and the manner in which the law has evolved and developed according to the changing socio-economic factors of the nation. The researcher has reviewed varied literary sources including printed media viz. commentaries, case law digests, law journals, newspapers, law magazines etc. along with electronic media including search engines and web portals for the purpose of collecting data for the study. The research endeavours to bring about in depth evaluation, enunciation and analysis of various concepts meaningfully segregated into technical, protective and deterrent concepts, through perusal of legal provisions and landmark judgments on the law governing dishonour of cheque.

1.6 Plan of the Study

Different aspects relating to dishonour of cheques have been studied comprehensively including the object of legislation, the issues pertaining to compounding of the offence, principle of strict liability,
extent of civil and criminal liability, principle of vicarious liability and suggestions/measures to improve the efficacy of the existing legal framework. The study has been conceptualized into various chapters as described and briefly summarised hereinafter –

Chapter 1 of the work briefly introduces the topic of dishonouring of the cheque with a briefing about transformation of the monetary framework from the barter system to the banking system. It further enumerates the reason for development of various kinds of negotiable instruments as well as the need for framing of laws with regard to the same. In this chapter, the researcher has also dwelled upon the problem profile, Objectives of undertaking the present study, hypothesis, review of literature as well as the research methodology for undertaking the present study.

Chapter 2 focuses on the historical development related to negotiable instruments through various ages. It ranges from the historical development of bills of exchange, hundies, promissory notes, to the development of banking system including cheques, pay orders and drafts. A brief discussion regarding enactment of the Negotiable Instruments Act, 1881 along with incorporation of section 138 to 147 pertaining to dishonouring of cheque, has also been made to look into the need for legislating on the said subject.

Chapter 3 aims at defining the term cheque in order to ascertain its true nature. This chapter further moves towards describing the essentials and characteristics of a valid cheque as well as the ingredients of liability under section 138 of the negotiable instruments Act. A brief discussion with regard to topics like endorsement of cheque, reasons for dishonor thereof, aspect of negotiability, bar of statutes and constitutionality of the provisions relating to dishonouring of cheques has also been made in this chapter.

Chapter 4 of the present work deals with the presumptions available to the holder and holder in due course, under sections 118 and 139 of the Negotiable Instruments Act. The present chapter further
delves upon the aspect of *mens rea* and the concepts of strict liability under section 140 of the Act, presumption of innocence in favour of the accused, preponderance of probabilities as well as the standard of proof.

**Chapter 5** of the work has been divided into two discernible parts, the first of which pertains to the aspect of compounding of the offence of dishonour of cheque, as envisaged under section 147 of the Act. This part further throws light upon the aspects of graded system of costs as well as requirement of the consent of the complainant for compounding of the offence. The second part of the chapter deals with the compensatory and punitive aspects of the offence under section 138 of the Act, with a detailed insight into the provisions of section 357 of the Code of Criminal Procedure 1973. Further an attempt to establish co-relation between compounding of the offence and compensatory aspect under the light of plethora of judicial pronouncements of various courts, has also been made.

**Chapter 6** focuses on the concept of vicarious liability as envisaged under section 141 of the Negotiable Instruments Act. While throwing light on the above stated concept, this chapter also discusses various connected issues like arraying of company as accused, issuance of notice to company as well as Directors, prosecution of the company which has entered into the process of winding up and raising of specific averments regarding the role played by officers of the company.

**Chapter 7** of the work enumerates the role, the judiciary has played in interpreting the various provisions of the Negotiable Instruments Act. The present chapter reflects as to how the judicial system of the country has attempted to frame various guidelines and to set an instructive mode for the legislature where either the laws in existence were not clear or were required to be amended to cope up with the changing socio economic set up of the country.

**Chapter 8** being the last chapter of the present work deals with
an in depth analysis of the provision existing in the laws along with an attempt to bring forth the lacunae prevailing in the present structure of the legal frame work and further stating some suggestions which can be termed as the need of the hour to strengthen the law relating to dishonor of the cheque in India.

Thus to sum up, it can be said that the present work attempts to analyse the various provisions incorporated in the laws in force in India, aiming at penalizing dishonouring of cheques as well as aiming at compensating the payee for loss suffered by him on account of default on the part of the drawer of the cheque. Further after analyzing various substantive and procedural laws an attempt has been made to point out the short comings in the existing jurisprudence along with suggestions for reformative measures with a humble approach and expectation that this may lead to desired change in the prevalent system.