

Implication of Other Legislations on Negotiable Instruments: A Study in the Light of Negotiable Instruments Act, 1881

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ABSTRACT

Purpose of the Study: The study focuses on the applicability of other legislations on Negotiable Instruments, which are principally administered by the Negotiable Instruments Act, 1881. The objective is to make a well-established nexus among various provisions of civil, criminal and procedural laws, administering the Negotiable Instruments in India. **Research Methodology:** The research is conducted on the secondary data which includes the legislative enactments, a thorough study of the laws on NI and Evidence Law, Law of Contract and the Reserve Bank of India Act etc. **Main Findings:** It is found that the Principle Act which governs the NI in India is not exhaustive enough in itself. Moreover, in the matters of contradiction with other legislations, other laws supersede the Act of 1881. It gives a need of enacting a totally new enactment or to do major amendments to cover the gap or contradictions. The study reveals the deviation of principles in terms of interpretation of the provisions from the mother Acts. **Implications of this study:** The research is helpful to the enactment of the new/amended legislation on NI in India. It is also helpful to the researchers to understand the applicability and limitations of the present Act. **Novelty/Originality of this Study:** The research has covered the most untouched area of the NI, which creates the illusion of the implications of the provisions of the Act, when this is superseded by other legislations. An endeavor is made to make sense of the demand of a new enactment.

Keywords

Bill of Exchange, Instruments, Legislation, Negotiable, Promissory Note

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Introduction

In day-to-day commercial dealings, all the transactions are not placed in terms of money. With the expanding commerce and trade, the increasing calls of money might not be matched merely with the exchange of money. Under certain circumstances, the businessman does not have ready cash with him. Moreover, he may not like to carry huge amount of money in his pocket. Due to these reasons, the business adopted a new method of exchanging documents, and these documents which are used as substitute for money, are known as NI. The origin of the current law on NI can be traced from personal laws, usages and customs of merchants and traders' years, before passing of the Act. In general, the word 'NI' means - a written unconditional order or promise to give a certain sum of amount which is negotiable from one hand to other hand by delivery or by indorsement and then simple delivery. In India, the legal provisions concerning to the NI, are confined in the NI Act, 1881 and in the Amendments Acts of 1988, 2002, 2015 and 2018.

A. Background

In antiquated occasions, the courses along which huge trade was continued, were unreliable and dealers conveying coins were normally burglarized of their riches by wandering privateers on ocean and by ravaging looters ashore. Throughout certain hundreds of years there appeared a

thought of trade, whereby Letters of Credit, for the most part titled Bills of Exchange from vendor of one nation, were given, requiring the obligation to be paid to a third individual who conveyed the Letter of Credit to where the account holder lived (H.K. Saharay and M. Saharay, 2016).

B. Review of Literature

According to Sethna (2017), sometimes noting is as good as the protest itself to determine the fact of dishonour. P.S.Narayan (2017) presented the cases of applicability of rules of presumptions on NI as well. R.K.Bangia (2007) introduced the rule of estoppel similar to the rule in evidence law. Avtar Singh (2016) and Bhashya (2008) have emphasised on the special rules of evidence applicable to Act of 1881. S. Abdul Khader Kunju (2017) told about the requirement of protest in case of bills of exchange drawn outside India. Srinivas Gupta (2017) discussed about the presumption of date as special rules of evidence. Edwin Peel (2017) argued upon the importance of consideration to validate a contract. Again Avtar Singh (2017) gave the reminder of void agreement if there is no consideration whether past, future or partial. Anirudh Wadhwa (2011) discussed the applicability of s. 25 of Indian Contract Act, which is about the void agreements. G.C.V. Subbarao (2011) focused on the incidences where the partial consideration can be considered to avoid the consequences of void agreement. S.R. Myneni (2010-11) introduced the Act of NI as the furtherance of the Contract Act. R.K.Bangia (2009) discussed the especial rules of evidence including

presumptions and estoppel. H.K. Saharay (2016) explained the importance of rule of estoppel as the special rule of evidence applicable to NI. As per the observation of S. Gupta (2017) the NI Act has scope to incorporate new provisions rendering the similar legislations to avoid the superseding effect of these. Importance and legal consequences of absence of consideration or the effect of partial consideration has been discussed by R.K. Gupta (2004).

Materials and methods

A. Hypothesis

Based on the literature review the researcher is in view that there are many legislations which are influencing the existence of the provisions of NI Act because of their prevailing nature, which should be eradicated.]

B. Significance of the Study

The study reveals the gap in the current legislation and suggests the scope of further amendments or enactment of new Act.

C. Research Methodology

The researchers have adopted the doctrinal method to study various related laws and have critically examined the scope of overlapping, prevailing or contradicting provisions of other laws in existence over the principal NI Act, 1881, including the Amendment Acts. Reports of various committees and research articles of prominent jurists are also the base of the study. The analytical methods of research have also been used in the way of incorporating the interpretations done by the judiciary in several cases.

Discussion

Special Rules of Law of Evidence: The Law of Evidence is a procedural law, applicable equally on civil laws and criminal laws. Following are the rules of evidence which are applicable to all NI:

1. Presumptions

The presumptions are given in the Indian Evidence Act, 1872. There are certain facts which are presumed in case of every NI under ss. 118 and 119 of NI Act, 1881.

A. Consideration

There is the presumption that each NI is drafted/made or drawn for the thought. In addition, when a NI is acknowledged, embraced, arranged or moved, it is also presumed that it was so accepted, endorsed etc. for a consideration. But if the party liable for payment shows that the NI was taken from him without consideration, then the holder has to prove that he took the NI for the consideration. In *A.V. Murthy v. B.S. Nagabasavanna*, AIR 2002 SC 985, it was held that a NI is presumed to be drawn for consideration and dismissal of complaint of dishonour of

cheque at threshold on ground that an amount was advanced four years back, the debt is not enforceable, such course is not proper.

In *Ayyakannu Gounder v. Virudhambal Ammal*, AIR 2005 (1) MLJ 14, following *Chinnaswamy v. Perumal*, AIR 2000 (1) MLJ 682, it was decided that on facts the presumption under section 118 of the NI Act had been rebutted.

In *Bonala Raju v. Sreenivasulu*, AIR 2006 (1) ALD 745, It was held that where the accomplishment of promissory note is proved, the presumption as to consideration under s. 118 of NI Act applies.

i. Applicability of the provision of Indian Contract Act: As we know that general rule of contract is that an agreement without consideration is void. A NI additionally contains an agreement for the instalment of a specific whole of cash. Therefore, the thought is additionally required for the legitimacy of the equivalent. It will be intriguing to realize that in the event of NI, the thought is attempted to be there. It is under the impression or assumption that each and every NI is drafted/ made, drawn, acknowledged, indorsed or transferred for some consideration. This presumption is, however, valid till contrary is proved. On the other hand, there is no such presumption in case of an ordinary contract. And the person enforcing the ordinary contract has to prove that it was made for some consideration. (*Abdul-Aziz* 1969).

ii. Effect of lack or failure of consideration: when total or part absence of consideration is proved, the liability of the parties is affected. Sections 43 to 45 of the NI Act, contain the provisions which state the effect of such absence or failure of the consideration, which may be discussed under the following two heads:

(a) Effect between immediate parties: Sometimes, a NI is made, drawn, acknowledged, indorsed or moved with no thought or now and then the thought flops in this manner. In such cases, the instrument is void as between the immediate parties and they are not at risk to pay the measure of the instrument. In this way, when it is demonstrated that there is no thought by any means, the NI doesn't make any commitment of instalment as between the parties to the transactions for example the immediate parties are discharged from their liability to make payment.

Thus, if a promissory note a bill of exchange is drawn without any consideration, the maker of note or bill is not liable to pay. Similarly, where the instrument is indorsed without any consideration, the indorsee who receives it without consideration cannot recover the amount from his indorser.

(b) Effect between remote parties: Sometimes, an individual gets a NI with no thought however moves the instrument to a holder for some thought. In such cases, the holder for thought and each ensuing holder getting title from him, with or without thought, may recoup the sum due on such instrument from the transferor for thought or from any earlier parties to such transferor.

Thus, a holder for consideration is not affected by the prior absence of consideration, and he can recover the amount from the transferor for consideration, and also from all the parties to such transferor. Moreover, any subsequent holder who got the instrument from a holder for value can also recoup the sum from the transferor for thought and from all the earlier gatherings. In this way, when the instrument gets under the control of a 'holder in due course' he or some

ensuing holder getting title from him, can recuperate the sum from transferor for consideration or from any prior party to such transferor. (K. Bhashyam 1963).

iii. Effect of part absence or failure of consideration: The effect of partial absence or failure of consideration may be discussed under the following two heads:

(a) Partial absence of money consideration: Sometimes, there is a partial absence or failure of money consideration. In such cases, parties standing in immediate relations to each other cannot recover more than the actual consideration (i.e. only reduced consideration can be recovered). In other words, the partial absence or failure of money consideration in a NI distresses the privileges of the holder counter to the immediate parties who signed the instrument. Such holder is eligible to recuperate simply the amount of abridged consideration.

(b) Partial absence of consideration not consisting of money: Sometimes, there is a part failure or absence of consideration other than the money. In such cases also, the privileges of the holder against the immediate parties who signed the NI, are affected in the same way as there is a failure of money consideration. Thus, such holder is entitled to recover only the amount of reduced consideration. It may, however, be noted that this rule is applicable if the consideration which has fizzled can be discovered as far as cash with no guarantee enquiry.

In *Naresh Kumar v. Sukhdev Singh*, it was held by Punjab & Haryana High Court that full and precise particulars have to be given when fraud or coercion are pleaded. In the absence of such particulars, the defendant was estopped from pleading that there was any fraud or forgery. It was further held that opinion of a Handwriting expert is not a perfect science and belief was placed on the pronouncement of Supreme Court in *Ravichandran v. State by Dy. Superintendent of Police, Madras* (2010) 11 SCC 120.

B. Date

If there should be an occurrence of a dated NI it is assumed that it had been made or drawn on the date that shows up on it. In *Bank of India, Jamshedpur*, it was decided by the Jharkhand High Court that "it is well settled that when the NI contains a date, then it shall be presumed that those instruments have been executed on the same date. Merely, because the executant of the document has not put the date below his signature does not take away the right of the holder of the document to recover the amount from the person who has signed those documents.

C. Time of Acceptance

If there should be an occurrence of an acknowledged bill of trade, it is assumed that it has been acknowledged inside a sensible time subsequent to being made, and before its development (i.e. the due date of instalment).

D. Time of Transfer

It is additionally assumed that each move of a NI has been drafted before its maturity.

E. Sequence of Endorsement

It is likewise assumed that the indorsements on the instrument have been indorsed in a similar line in which they set on the instrument. This presumption, however, may be rebutted by evidence, for instance, where successive indorsers of a promissory note were allowed to prove that as between themselves they were co-sureties.

F. Stamp

In some cases, a NI is lost or demolished. In such cases it is assumed that it was appropriately stepped.

G. Holder in due course

A 'holder in due course' is an individual who has gotten a NI in compliance with good faith and for value. It is assumed that each holder of a NI is a 'holder in due course. If there should arise an occurrence of contest, it is the obligation of a party subject for repayment to demonstrate that the individual holding the NI isn't the holder in due course. In any case, if the parties obligated for repayment shows that the NI was acquired from its legitimate proprietor by means of an offense or extortion, at that point it is the obligation of the holder to demonstrate that he is a holder in due course for example to demonstrate that he got the NI in accordance with some good faith and for value. In law, the duty to prove certain facts is known as 'burden of proof'. (Brannan 1911).

H. Fact of dishonour

Sometimes, a NI is dishonoured i.e. the party liable for payment fails to make the payment. In such cases, filing a suit for the recovery of amount is the right of the holder, after giving a due notice of dishonour. However, before filing the suit, he may obtain a certificate from a Notary Public about the reality of dishonour. Such a declaration is known as 'protest'. On the verification of such a dissent, the court will assume the reality of dishonour. It may be noted that in case of any dispute about these presumptions, these need not be proved by the person who holds the NI until contrary is proved. In other words, these presumptions are rebuttable by evidence i.e. the party liable for payment may prove by evidence that these facts do not exist. (H. K. Saharay 2011).

I. Presumption as to Service of Notice

If by registered post a notice has been sent and the address of drawer of the cheque mentioned on it is correct then it is presumed to be served. However, the drawer is at right to controvert this presumption. (A. Sharma 2012).

The Apex Court in a number of has decided that if a notice which is duly served on a correct address or returned with the remarks such as refused, no person was present at home, house was locked or something like it, it is presumed to be duly served.

J. Presumption under s. 139

If an admission has been made in regard to the execution of a cheque, it is presumed that this discharged the liability of a holder of a cheque whether in full or in part. If the cheque dishonoured, the burden of proof might be on the drawer who drew the cheque that it might be without lawful consideration.

Note: Presumption under ss. 139 and 118 are repeatedly read together i.e. presumption of consideration and presumption of date etc. (A. Singh 2016).

Disproving the Presumption: By presenting a reasonable doubt and doctrine of probability based on the material submitted in the court by the complainant, the presumption under s. 139 can be rebutted.

Conclusion: While closely analysing the case laws on ss. 118/139 of the Act, it may appear that there are conflicting views on certain aspects. Nevertheless, at the same time, several principles can be elucidated from the decisions rendered by various Constitutional Courts, without offending the spirit of most of those decisions. Some of those principles are set out herein below:

(i) Just like any other primary facts, accomplishment of an instrument should be evidenced by the payee as required under s. 3 of the Evidence Act, where the expression 'proved' is defined. In other word, the proof of execution must be such that the court must be able either to believe that the instrument is executed by the drawer or that it must be sufficient for the court to ponder that the execution of the document is so feasible that a judicious man would act upon such supposition.

(ii) Presumption under ss. 118/139 of the Act shall be drawn only when the effecting of the NI is either proved or admitted.

(iii) Admission of signature alone in an instrument cannot be considered as admission of performance of the instrument.

(iv) Once the implementation of the instrument is either proved or admitted, the court has no option but to postulate that the holder of the cheque expected the same for the expulsion of debt or obligation or that the instrument was drawn for consideration.

In other words, where the execution of a NI is evidenced against or admitted by a defendant, the burden of proving absence of consideration lies very heavily upon him.

(v) When the presumption is drawn, it can be disproved only when the opposing is 'proved'. i.e., by adducing proof and not by suggesting a mere reasonable and plausible defence. Else, the initial presumption drawn will stand established.

For rebutting the presumption, the defence side need not adduce evidence. It can rely on the materials brought out in the evidence of the prosecution. The evidence produced could be relied upon which is presented by the complainant, for said purpose.

(vi) Though it was held in Kundan Lal that the presumption under s. 118 could be rebutted by raising another factual presumption under s. 114 of the Evidence Act the said proposition lost its precedential value, when the Supreme Court declared in Hiten P. Dalal that the said findings are to be restricted to the particulars of that case only.

(vii) Once both sides adduce evidence, the relevance of presumptions vanishes into thin air. When there is evidence on both sides, the court has to evaluate the same in

accordance with the well-known rules of appreciation of evidence and to arrive at a finding whether the required facts are proved by the respective sides. (S. Goel 2019).

(viii) Presumption is only a rule of evidence; it is not evidence in itself.

(ix) Presumptions are procedures of evidence and don't struggle with the assumption of guiltlessness, on the grounds that by the last all that is implied is that the arraignment is obliged to demonstrate the body of evidence against the blamed past sensible uncertainty. The commitment on the indictment might be released with the assistance of assumptions of law or truth except if the denounced cites proof demonstrating the sensible chance of the non-presence of the assumed certainty/ fact.

2. Estoppel

We know the estoppel means a prevention of claim or assertion of law. The following estoppels are considered to be there against the parties to the NI. In other words, the parties are prevented from denying the following facts:

A. Estoppel against denying the original validity of the instrument: Sometimes, against the person who drafted the NI, the holder in due course claims the retrieval of the amount due on the instrument. In these cases, the maker or the drawer cannot escape their accountability on the basis that the instrument was invalid when it was made or drawn i.e. the maker or the drawer is estopped (i.e. prevented) from refuting the legitimacy of the instrument.

An individual isn't blocked under the segment from impeding the rationality from safeguarding the note on the ground that he was a minor as on the date of the note, as the particular arrangement in s. 120 is dependent upon the general principle authorized in s. 26. The customary acceptor of a bill isn't referenced in the area. By uprightness of s. 117 of the Indian Evidence Act, 1872, it is sanctioned that no acceptor of a bill of trade will be allowed to deny that the cabinet had power to draw or indorse the bill. The acceptor of a bill may, in any case, deny that the bill was truly by the individual by whom it indicates to have been drawn. (S. Goel 2019).

B. Estoppel against denying the capacity of the payee to endorse: Sometimes, against the person who draws the NI, the holder in due course claims the retrieval of the amount due on the instrument, In such cases, the maker or the acceptor cannot run away from their accountability on the basis that the payee had no capacity to indorse the promissory note or the bill of exchange at the time of making it, i.e. the maker or the acceptor is estopped (i.e. prevented) from repudiating payee's capacity to indorse the instrument.

C. Estoppel against denying the signature or capacity of prior parties: Sometimes, the holder in due course claims the retrieval of the amount due on the instrument, against the indorsers. In such cases, the indorser cannot escape their accountability on the basis that the signatures of any prior party were forged or that he (i.e. prior party) was not competent to contract.

Note: It may be noted that privilege is available to all the subsequent holders. The reason for the same is that by an indorsement, the indorser of the instrument guarantee that

all previously concluded indorsements are made by competent parties and are genuine.

3. Analysis of the Provisions of the Act

The researcher has identified few provisions of the Act which needs further clarifications or reframing for prolonging the significance of the Act. Following are the provisions to be focused upon:

A. The Definition of NI

In the Act the term NI has not been defined by the legislature which always gives the scope of various judicial pronouncements and interpretations, which may vary case by case. Besides giving the definition of the instrument the Section 13 of the Act refers it as under three kinds such as a promissory note, bill of exchange or cheque.

The gap is between the provision of this Act and other laws prevailing in India. Indian law recognizes several instruments as NI which are not covered under this Act. Those instruments are the result of many customs and usages prevailing in trade and commerce from ancient time, which found their identification only in various judicial pronouncements but not in a codified law. (S. Goel 2016).

Only three classes of NI are mentioned in s. 13 of the Act such as, Promissory Note, Bill of Exchange and Cheque while other Acts i.e. Reserve Bank of India Act , Stamp Act , usages and customs recognize Hundi , Share-warrants , Dividend- warrants , Railway Receipt , Bankers Draft and Circular Notes as a NI. (V.K. Solanki 2013).

B. Classification of NI

The Act suggested various classifications of NI which includes:

i. Bearer Instruments: A NI can be made payable to bearer which is expressly written in the language to be so payable to bearer.

The analysis of this section reveals that a NI is made payable expressly to bearer in any of the following cases:

a. Where an instrument is expressly written in the manner to be payable or to make payment to bearer

b. Where the solitary or the latest endorsement on the NI is a blank endorsement. Thus, where an instrument is originally payable to a particular person, but subsequently endorsed in blank, the instrument will become payable to bearer.

e.g. :

- (a) Pay to A or bearer
- (b) Pay the bearer

ii. Order Instrument: A NI can be payable to order which is expressly written as payable on order, or which is expressly payable to a certain person, and not restricting the transfer of the instrument or does not have any prohibiting words to further transfer.

The analysis of this section reveals that, a NI is payable to order in any of the following stated cases:

a. Where the instrument is expressly written to be payable to order.

b. Where the instrument expressly written to be payable to a particular/certain person and which does not contain any restrictive words to its further transfer.

e.g.:

- (a) Pay to A or order
- (b) Pay to the order of A
- (c) Pay to A
- iii. Demand Instrument: A NI can be payable on demand.

The analysis of the sections reveals that the following instrument are payable on demand:

a. A promissory note or bill of exchange in which the time is not specified for payment.

b. A promissory note or bill of exchange which is expressly written the term 'on demand', or 'at sight', or 'on presentment' for payment.

Now as per the Act, it gives the definitions of promissory note and bill of exchange, which reads as under:

Promissory Note: As per the definition- An instrument which is in writing and consisting an unconditional promise, and signed by the maker of the instrument to pay a certain amount to order or to bearer of the instrument.

Bill of Exchange: As per the definition- An unconditional order to a certain person to pay a certain amount to order or to bearer.

The analysis of all the definitions reveals that a promissory note and a bill of exchange may be:

- (a) Payable to order or to bearer
- (b) Payable to order on demand or payable to bearer on demand

The gap/ contradiction is between the provisions of this Act and the Provisions of RBI Act. Reserve Bank of India Act, 1934 restricts the issue of demand bill of exchange and promissory note. As per the language of the Act: No other person is authorized other than the Bank or Central Government (if expressly recognized by the Act) to issue any bill of exchange or promissory note which is payable to 'bearer on demand'.

Again the proviso of the section confirms that whatever is confined in NI Act, no other person other than the Bank or Central Government (if expressly recognized by the Act) is authorized to issue any promissory note which is expressly payable to 'the bearer of the instrument.'

C. Presumption of Consideration

As per s. 118 of the Act, the court has a presumption i.e. the 'Presumption of Consideration' attached with every NI. It means this need not to be proved by the person who holds the NI until contrary is proved.

In various judicial pronouncement , the court recognizes a bill of exchange or promissory note which was made without consideration, these kind of bill of exchange or promissory note are called 'Accommodation Bill or Note'. These kinds of NI may be drawn in urgent need of money, which can be raised by a friend without any valuable consideration. A. Chaudhary (2020).

Section 43 of the Act states the consequences of the recovery of amount mentioned on it by the transferee who received it for value.

The gap is about s. 118 and s. 43 of the Act, those are prima facie contradictory. One recognizes consideration as

presumption, second enforces the instrument, which is without consideration. Again the term 'accommodation bill or note' is missing in the definition clause, classification or from any explanation clause of the Act.

D. Inchoate Instruments:

Section 20 of the Act laid down the provisions related to an Inchoate Stamped Instrument. As per the language of the section, the Act clearly indicates the instruments those are stamped and in the Act there are only two instruments which are stamped i.e. a promissory note and bill of exchange. J. Eaton (1903).

The gap is, many judicial pronouncements recognise or consider a cheque as inchoate instrument, if it's lacking one or two essentials mentioned in the characteristics of the NI, irrespective of the fact that the cheque is not a stamped document or there are number of differences between the documents recognised by the s. 20 of the Act and in cheque.

E. Requirement of Stamp

The Act nowhere mentions the requirement and importance of the stamp, but every format of promissory note and bill of exchange must consist the stamp on it. Mandatory provision for affixation of stamp on such instruments is mentioned in The Indian Stamp Act, 1899. (Bunker 1903).

Conclusion

Beside the areas/provisions mentioned in the research paper, there are number of other provisions which need improvement/ rectification or clarification. Ambiguity in the language of the Act gives the scope of several analysis of the language of the section, explanation and proviso. It imposes the extra burden on judiciary to interpret the contents of the Act, which may differ from case to case basis. The NI Act is a Central Act, but if there is any contradiction of the laws of this Act or the laws of the Reserve Bank of India Act (mentioned in the research paper), the later will prevail. Thereafter, it is the failure of the legislature to give dissimilar Acts which are curtailing or limiting the existence of other Acts. Removal of ambiguity from NI legislation shall expand the scope of its application not only in the cases of property dealing but even in the dealing of subject matters of intellectual property right such as patent, copyrights, trademark etc. by providing trans-border access.

Suggestion

In the opinion of the researchers, enactment of the Amendment Acts is not sufficient in the current scenario, but there is a strong need of reframing of the laws related to NI, keeping in mind all other laws, customs and usages governing these instruments. The researchers suggest the enactment and enforcement of new NI Act, to be free from the existing breaks. The researcher is strongly in favour that complaints/issues related to negotiable instruments would be under banking Ombudsman specially in the case of dishonor of the cheques.

Researchers' contribution statement

The researchers designed and performed the study; Collected information through various enactments and judicial pronouncements; Analyzed and construed the provisions; Wrote the paper; Authors have tried to explain the provisions first and then tried to discuss those in separate segments.

Competing interest statement

The researchers declare no conflict of interest.

Limitations and study forward

The present study is limited to show and analyse the impact of other legislations on NI, the detailed suggestions and the proposed draft of the amendment Act can be taken up as an idea for further study on this specific area.

Additional information

No additional information is available for this research paper.

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