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Cheque Dishonour Law in Transition: A Critical Analysis of Nepal's Legal Regime Before and After the Banking Offence and Punishment (Second Amendment) Act, 2082

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ABSTRACT

Cheque dishonour in Nepal has been governed by two overlapping statutes: the Negotiable Instruments Act, 2034 and the Banking Offence and Punishment Act, 2064. The Banking Offence and Punishment (Second Amendment) Act, 2082 did not introduce criminal liability for the first time, but it reorganised an existing dual regime. This article examines that transition through a doctrinal study of the relevant statutes, Supreme Court decisions and secondary materials. It focuses on the repeal of section 107A of the Negotiable Instruments Act, the replacement of former section 3(c) with section 3A, the forty five day notice and certification process, graded imprisonment, the five percent fine, limitation and compromise. The new framework gives the drawer an opportunity to make payment before formal certification and makes punishment more closely reflect the amount involved. At the same time, it continues to combine private recovery, banking regulation and criminal sanction. The article argues that the amendment has made the law more coherent and procedurally clearer, but important questions remain about holder entitlement, the role of earlier case law and the practical operation of certification and settlement.

Keywords: *Cheque Dishonour, Banking Offence, Negotiable Instruments Act, Banking Law, Nepal*

I. INTRODUCTION

Cheques remain a widely and popularly accepted negotiable instrument in commercial transactions as the system of payment of cash through cheques dates to the 17th century.[1] Their continued use also reflects the practical relationship between banks, drawers and payees in ordinary commercial dealings.[2] The legal significance of a cheque therefore lies not only in its

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[1] Pushpanjali Sood, *Dishonour of Cheque: An Overview*, 2 INT'L J.L. 8, 8 (2016), https://www.lawjournals.org/assets/archives/2016/vol2issue6/2-5-44-192.pdf (last visited Sept. 8, 2026).

[2] AWATAR NEUPANE, BANKING LAW AND CRIME 240 (2022).

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form as a negotiable instrument but also in the expectation that it will be honoured when properly presented and sufficient funds are available.

Section 2(k) of the Banking Offence and Punishment Act, 2064 (as amended in 2082) defines 'cheque' as a bill of exchange under prevailing law, drawn on a bank, financial institution or cooperative bank and instructing payment on demand.[3] A cheque is a special form of bill of exchange drawn on a bank and payable on demand.[4] Its essential characteristics include an unconditional order to pay, a specified drawee bank, a certain payee, a specified amount and payment on demand.[5] There are generally three parties to a cheque: the person issuing the cheque is the drawer, the person in whose favour it is issued is the payee or holder and the bank directed to make payment is the drawee.

Nepal's law on cheque dishonour did not develop under a single statute. The Negotiable Instruments Act, 2034 dealt with dishonour, notice and compensation and contained the penal provision in section 107A. The Banking Offence and Punishment Act, 2064 created a separate criminal route for knowingly issuing a cheque without sufficient funds. The 2082 amendment therefore did not transform a purely civil wrong into a new criminal offence; its main outcome was to reorganise an already overlapping framework.

This article examines how the 2082 amendment changed the relationship between the two Acts and what that change means in practice for the holder and the drawer, comparing the old and new structures and assessing how compensation, punishment, procedural protection and settlement now interact.

II. CHEQUE DISHONOUR AND THE PRE-AMENDMENT LEGAL REGIME

A. Meaning and grounds of cheque dishonour

Section 2(l) of the Banking Offence and Punishment Act, 2064, inserted by the Second Amendment of 2082/01/24 BS (7 May 2025), defines "cheque dishonour" as a situation where a bank, financial institution or cooperative bank certifies under section 3A(5) that payment cannot be made to the holder because the drawer's account does not hold the required amount when payment of the amount stated in the cheque is demanded.[6] Cheque dishonour has long been treated as a problem for confidence in cheque based transactions.[7] At the individual level, the holder is left without the payment expected from the instrument.

[3] Banking Offence and Punishment Act, 2064 (2008) (Nepal), § 2(k).
[4] NEUPANE, *supra* note 2, at 241.
[5] M.S. RAMA RAO, LAW OF BANKING 28 (n.d.).
[6] Banking Offence and Punishment Act, 2064 (2008) (Nepal), § 2(l).
[7] Sood, *supra* note 1, at 8.

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Generally, when a cheque is presented and sufficient funds are available, the drawee bank is expected to honour it. A wrongful refusal by a bank to honour a customer's cheque where sufficient funds exist may amount to a breach of the banker-customer contract and may give rise to damages.[8] However, dishonour may occur for several reasons,[9] including insufficient funds, a stop payment instruction, closure of the account, a mismatched or absent signature, material alteration, inconsistency between the amount in words and figures, or an invalid or stale date.[10] The criminal regime examined in this article is principally concerned with dishonour for want of sufficient funds rather than every technical reason for which a bank may return a cheque.

B. Pre-amendment legal regime of cheque dishonour

In Nepal, dishonour of a cheque was addressed under the following Acts:

i. Negotiable Instruments Act, 2034

ii. Banking Offence and Punishment Act, 2064

i. Negotiable Instruments Act, 2034

The Negotiable Instruments Act, 2034 defines a cheque as a bill of exchange drawn on a specified bank and payable on demand. The Act recognises dishonour by non acceptance and dishonour by non payment. Under section 64, a bill of exchange is deemed to be dishonoured by non acceptance when the drawee makes default in acceptance upon being duly required to accept it, where acceptance is conditional or where the drawee is incompetent to contract.[11] Section 65 provides that a negotiable instrument is dishonoured by non payment when the maker, acceptor or drawee defaults in payment when duly required to pay.[12]

The Act also regulates notice of dishonour. Section 66 requires notice of dishonour to be given to parties whom the holder seeks to make liable.[13] Under section 67 such notice may be oral or written and may be given to an authorised agent or to the heir of a deceased party, and it is to be given within a reasonable time.[14]

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[8] *Allied Bank (Nig.) Ltd. v. Akubueze*, (1997) 6 N.W.L.R. (Pt. 509) 374 (Nig.).

[9] Praveen Unnikrishnan, *7 Reasons Why Your Cheque Is Dishonoured*, FINGYAN (May 11, 2018), https://web.archive.org/web/20210124184241/https://www.fingyan.com/reasons-why-your-cheque-is-dishonoured/ (last visited Sept. 8, 2026).

[10] *The Procedures to Get Remedies Against a Dishonor of Cheque or, Bounced Cheque*, AHN LEGAL, https://ahnlegal.com/legal-updates/legal/the-procedures-to-get-remedies-against-a-dishonor-of-cheque-or-bounced-cheque-2 (last visited Sept. 8, 2026).

[11] Negotiable Instruments Act, 2034 (1977) (Nepal), § 64.

[12] *Id.* § 65.

[13] *Id.* § 66.

[14] *Id.* § 67.

The remedial provisions of the Act are primarily compensatory. Section 107 entitles a holder to recover the amount due together with expenses properly incurred in presenting, noting and protesting the instrument. An endorser who has paid the amount for which he or she was liable may recover the amount paid together with interest from the date of payment until realisation.[15] Section 108 provides a five year limitation period from the date on which the cause of action arises.[16]

Before the Second Amendment, section 107A added a specific penal consequence where a person deliberately issued a cheque despite having no deposit or insufficient deposit, and the cheque was dishonoured for want of sufficient funds. The provision authorised recovery of the cheque amount and interest and permitted imprisonment for up to three months, a fine of up to three thousand rupees or both.[17] This meant that the Negotiable Instruments Act combined compensatory rules with a limited penal response.

ii. Banking Offence and Punishment Act, 2064 (before the Second Amendment)

The Banking Offence and Punishment Act, 2064 created a second, more public law oriented route. Before the 2082 amendment, section 3(c), in the form given to it by the First Amendment of 2073, prohibited a person from knowingly issuing a cheque where the drawer's account did not contain sufficient funds to honour it. Section 15(1) prescribed criminal consequences for offences under section 3.[18] Thus, even before 2082, insufficient fund cheque dishonour could generate criminal liability under the Banking Offence Act independently of section 107A of the Negotiable Instruments Act.

The coexistence of these remedies had practical consequences. A holder could proceed personally under the Negotiable Instruments Act or could lodge a complaint so that the same conduct was investigated as a banking offence at the instance of the State. The criminal route offered a stronger enforcement mechanism because it involved police investigation and public prosecution, but it also brought a private payment dispute into the criminal process. That overlap is central to understanding why the 2082 reform matters.

[15] *Id.* § 107.
[16] *Id.* § 108.
[17] *Id.* § 107A (repealed 2025).
[18] Banking Offence and Punishment Act, 2064 (2008) (Nepal), §§ 3(c), 15(1).

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III. The Legal Regime After the Second Amendment Act, 2082

A. Statutory restructuring and a dedicated cheque dishonour provision

The Banking Offence and Punishment (Second Amendment) Act, 2082 removed the former section 3(c) and inserted a dedicated section 3A dealing specifically with the issuance of cheques without sufficient funds.[19] The amendment also introduced statutory definitions of 'cheque', 'cheque dishonour' and 'holder' and expanded relevant provisions to include cooperative banks. The reform is therefore better understood as a restructuring of the existing banking offence regime than as the first criminalisation of cheque dishonour.

B. Notice, forty five day opportunity and certification

Section 3A establishes a staged procedure before a cheque is formally certified as dishonoured. When a cheque presented for payment cannot be honoured because the account does not contain sufficient funds, the bank, financial institution or cooperative bank must return the cheque to the holder. If the holder wishes to obtain formal certification of dishonour, the institution must notify the account holder and allow up to forty five days to deposit the required amount while keeping a record of the notice.[20] The fact of notice is also to be recorded on the returned cheque.

If the amount remains unpaid after the prescribed period and the cheque is presented again, the institution must certify the fact of dishonour where payment is still impossible for want of funds and return the cheque to the holder within three days. An account holder who has been given notice may pay the cheque amount to the holder and take back the cheque at any time. Nepal Rastra Bank subsequently issued the Procedure for Certifying the Dishonour of Cheques, 2082 to operationalise this statutory certification mechanism.[21]

In practical terms, the amended process has four stages: the cheque is first presented and returned for insufficient funds; the drawer is then notified and given up to forty five days to make the account good; the cheque is presented again after that period; and if funds are still insufficient, formal certification must follow within three days. The important change is the waiting and certification stage. Under the earlier law, a returned cheque could much more quickly become the basis of a complaint.

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[19] Banking Offence and Punishment (Second Amendment) Act, 2082 (2025) (Nepal), §§ 3–4.
[20] Banking Offence and Punishment Act, 2064 (2008) (Nepal), § 3A(2)–(7).
[21] Nepal Rastra Bank, *Procedure for Certifying the Dishonour of Cheques, 2082*, Notice No. 16/081–82 (July 10, 2025), https://www.nrb.org.np/bfr/%e0%a4%b8%e0%a5%82%e0%a4%9a%e0%a4%a8%e0%a4%be-%e0%a4%a8%e0%a4%82-%e0%a5%a7%e0%a5%ac-%e0%a5%a6%e0%a5%ae%e0%a5%a7-%e0%a5%ae%e0%a5%a8-%e0%a4%9a%e0%a5%87%e0%a4%95-%e0%a4%85%e0%a4%a8%e0%a4%be/ (last visited Sept. 9, 2026).

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C. Recovery, five percent fine and graded imprisonment

The Second Amendment inserted section 15(1A). Where dishonour is certified under section 3A(5), the drawer is liable to pay the holder the full amount stated in the cheque together with interest, calculated in accordance with prevailing law from the date of issuance until recovery. In addition, the drawer is liable to a fine equal to five percent of the cheque amount.[22] The amendment also replaced a uniform approach with graded imprisonment according to the amount involved, as set out in Table 1.[23]

Cheque amount	Imprisonment
Up to NPR 1.5 million (up to NPR 15 lakh)	Up to 1 month
Above NPR 1.5 million and up to NPR 5 million (above NPR 15 lakh and up to NPR 50 lakh)	1 to 3 months
Above NPR 5 million and up to NPR 10 million (above NPR 50 lakh and up to NPR 1 crore)	3 months to 1 year
Above NPR 10 million and up to NPR 100 million (above NPR 1 crore and up to NPR 10 crore)	1 to 2 years
Above NPR 100 million (above NPR 10 crore)	2 to 4 years

Table 1: Imprisonment by cheque amount under section 15(1A)

The amendment also makes section 3A relevant to the Act's additional punishment provision for institutional office bearers. Where the person committing the offence is the chairperson, a director or the chief executive officer of the institution concerned, section 15(8) adds a further one year of imprisonment. The overall post amendment structure combines restitution of the cheque amount, interest, a percentage fine and imprisonment.

D. Limitation, public prosecution and compromise

The amendment introduced a specific limitation rule for cheque dishonour offences. An FIR concerning an offence under section 3A may be lodged within one year from the date on which dishonour is certified, and the case must be filed before the competent District Court within six months from the filing of the FIR.[24] The Government remains the plaintiff in offences prosecuted under the Banking Offence Act, reflecting the public character of the proceeding.[25]

A major innovation is the express recognition of compromise (*milapatra*). Under section 26A, if the defendant pays the cheque amount to the holder and both parties wish to compromise, they may apply through the investigating officer to the government attorney while the matter is

[22] Banking Offence and Punishment Act, 2064 (2008) (Nepal), § 15(1A).
[23] *Id.*
[24] *Id.* § 17(1A).
[25] *Id.* § 18.

under investigation, or through the government attorney to the court after filing. Once a compromise is executed, the defendant is not subjected to punishment under the Act.[26]

E. Repeal of section 107A and the saving of existing cases

Section 12 of the Second Amendment repealed section 107A of the Negotiable Instruments Act, 2034.[27] The repeal removed the separate penal provision that had previously existed within the Negotiable Instruments Act. Importantly, the amendment contains a saving clause: cases already filed at the commencement of the amendment seeking punishment under section 107A may continue to be dealt with under that provision. The amendment sought to end future penal duplication while protecting proceedings already instituted.

The repeal does not erase the wider law of negotiable instruments. Provisions concerning the character of cheques, dishonour, notice and compensation continue to form part of the Negotiable Instruments Act. What changed most substantially is the location and design of the penal response to insufficient fund cheque dishonour: future criminal liability is channelled through the dedicated framework of the Banking Offence Act.

IV. JUDICIAL INTERPRETATION

A. *Arjun Prasad Bidari v. Nepal Government*

In *Arjun Prasad Bidari v. Nepal Government*, the Supreme Court explained that cheque dishonour arises from the giving and receiving of a cheque between persons and the inability of the holder to obtain payment because sufficient funds are not available in the drawer's account.[28] The decision also examined liability under section 3(c) of the Banking Offence Act in its original wording, which spoke of knowingly writing a cheque and taking or giving payment on it. The Court held that knowingly writing such a cheque was not enough: payment had actually to be taken and given, which could not happen without the involvement of bank staff. Because the cheque had simply been returned unpaid, the conduct fell under section 107A of the Negotiable Instruments Act and the charge sheet was quashed. The case is useful because it demonstrates how contested the boundary between the two statutes was well before the Second Amendment.

B. *Mandira Devi Dhuju Shrestha v. Nepal Government*

In *Mandira Devi Dhuju Shrestha v. Nepal Government*, the Supreme Court emphasised the element of knowledge. Where a person issues a cheque with knowledge that the account does

[26] *Id.* § 26A.
[27] Banking Offence and Punishment (Second Amendment) Act, 2082 (2025) (Nepal), § 12.
[28] *Arjun Prasad Bidari v. Nepal Government*, NKP 2075, Issue 11, Decision No. 10137.

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not contain sufficient funds, the act must be treated as done knowingly for the purpose of banking offence liability.[29] The Court's reasoning placed the drawer's knowledge of the account position at the centre of the offence, but it also required that payment had been taken and given on the cheque. The appellant was acquitted because the same dishonoured cheque had also been prosecuted as fraud in the District Court, and the Court held that a second prosecution on one subject offended the principle of double jeopardy. Although the Second Amendment has replaced the former section 3(c) formulation with section 3A, the earlier cases remain important for understanding the doctrinal background from which the amended regime developed.

V. CRITICAL ANALYSIS: CHEQUE DISHONOUR LAW IN TRANSITION

A. From parallel penal routes to a more coherent statutory structure

The clearest effect of the 2082 reform is that it reduces the duplication that previously existed in the penal sphere. Before the amendment, section 107A of the Negotiable Instruments Act and section 3(c) with section 15 of the Banking Offence Act could both add penal consequences to an insufficient fund cheque. That arrangement made the boundary between a negotiable instrument dispute and a banking offence difficult to draw. By repealing section 107A and introducing a cheque specific section 3A in the Banking Offence Act, the amendment leaves the Negotiable Instruments Act with an important civil and commercial role while concentrating criminal enforcement in the banking offence framework.

For that reason, the transition should not be described simply as a move from the Negotiable Instruments Act to the Banking Offence Act. The Banking Offence Act was already part of the law before 2082. What changed was the allocation of functions between the two statutes: general rules on negotiable instruments and compensation remain relevant under the former, whereas the principal criminal process for insufficient fund dishonour is now organised under the latter.

B. Certification as procedural protection and possible delay

The forty five day notice period gives the drawer a meaningful opportunity to correct the default before formal certification. That safeguard may be justified where the shortfall is temporary, arises from an error or can be cured without criminal proceedings. It also changes the point at which a returned cheque becomes a criminal law problem: the initial return is no longer the end of the process.

[29] *Mandira Devi Dhuju Shrestha v. Nepal Government*, NKP 2076, Issue 4, Decision No. 10241.

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However, from the holder's perspective, the same protection means waiting longer before the criminal process can be invoked. A person who accepted the cheque as payment has already been denied the expected funds, yet must wait for notice, expiry of the prescribed period and re-presentation of the cheque. The fairness of this arrangement therefore depends heavily on prompt action by banks after the forty five days have expired. The Nepal Rastra Bank procedure is especially important here because inconsistent certification practices would recreate uncertainty at the very stage the amendment was designed to standardise.

C. A more proportionate but still hybrid remedial model

The new punishment scale is more proportionate than a single maximum term applied irrespective of value. Former section 107A of the Negotiable Instruments Act allowed the same maximum imprisonment whether the cheque was relatively small or very large. Section 15(1A) links imprisonment to monetary bands and adds a five percent fine. The structure is still punitive, but it gives the amount involved a direct role in sentencing.

Even after that change, the regime serves more than one purpose. It seeks to secure payment of the cheque amount and interest, it authorises punishment through fine and imprisonment and it allows the dispute to end through compromise once payment is made. These features show why cheque dishonour sits uneasily between debt recovery and criminal law. On that understanding, the criminal sanction is most defensible when it is used to deter deliberate misuse of cheques, not merely as a routine method of pressuring payment in every disputed transaction.

D. Compromise, access to remedy and remaining questions

The compromise provision is a practical response to that tension. Many cheque dishonour cases arise out of ordinary private dealings even though prosecution under the Banking Offence Act is carried on in the name of the State. Once the holder has been paid, insisting on continuing every prosecution may serve little remedial purpose. Section 26A therefore allows settlement to restore the holder's financial position while also reducing unnecessary use of investigative and prosecutorial resources.

The amended Act defines a holder by reference to entitlement to receive the amount, but the statute does not itself explain how that entitlement should be established when the underlying transaction is contested. This uncertainty raises the question of how a holder's entitlement is to be proved before the amended remedy is invoked.[30] A separate issue is the continuing relevance

[30] Kathmandu University School of Law, *Recent Amendment to Banking Offence and Punishment Act: An Effort to Correct the Anomalies in Cheque Dishonor Laws of Nepal, But Is It Sufficient?*, ASIA LEGAL INFORMATION NETWORK (Dec. 19, 2025), https://www.e-alin.org/eng/legislative/L/518/view.do (last visited Sept. 8, 2026).

of earlier Supreme Court decisions that treated the drawer's knowledge of insufficient funds as central to liability. Courts will need to decide how that reasoning fits with the new notice and certification procedure. These questions are likely to determine how far the statutory redesign changes practice rather than merely changing the route through which cases are brought.

VI. Conclusion

Before 2082, Nepal's cheque dishonour law operated through two overlapping statutes. The Negotiable Instruments Act, 2034 supplied the basic rules on dishonour, notice and compensation and contained section 107A. The Banking Offence and Punishment Act, 2064 provided a separate criminal route for knowingly issuing a cheque without sufficient funds. The result was a legal framework in which the same failed payment could engage both private law remedies and public prosecution.

The Second Amendment reorganised that framework rather than replacing it altogether. Section 3(c) was removed and section 3A introduced a cheque specific procedure based on notice, a forty five day opportunity to pay and formal certification. The amendment also introduced graded imprisonment, a five percent fine, a specific limitation rule and compromise, extended relevant provisions to cooperative banks and repealed section 107A while preserving cases already filed under it.

The latest amendment of the Banking Offence and Punishment Act, 2064 repealed the penalty provision in section 107A of the Negotiable Instruments Act, 2034 and set graded criminal penalties for cheque dishonour. These penalties may deter the misuse of cheques and so protect businesses and individuals from losses caused by dishonoured cheques. The Act also allows compromise, which can save time and resources: both parties may apply through the investigating officer or the government attorney, even after a case is filed, provided the cheque amount is paid to the holder.

These changes make the statutory scheme easier to understand and fairer to both sides. The drawer now has a defined opportunity to cure an insufficient balance, while the holder retains a route to recover the cheque amount and interest and to invoke criminal enforcement after certification. The remaining difficulty is that the law still uses criminal process to address disputes that often begin as private commercial obligations. Its success will depend less on the wording of the amendment alone than on consistent certification by financial institutions and careful judicial treatment of entitlement, knowledge and compromise. The 2082 amendment has brought greater order to the law, but the practical meaning of that reform will be settled by its application.

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