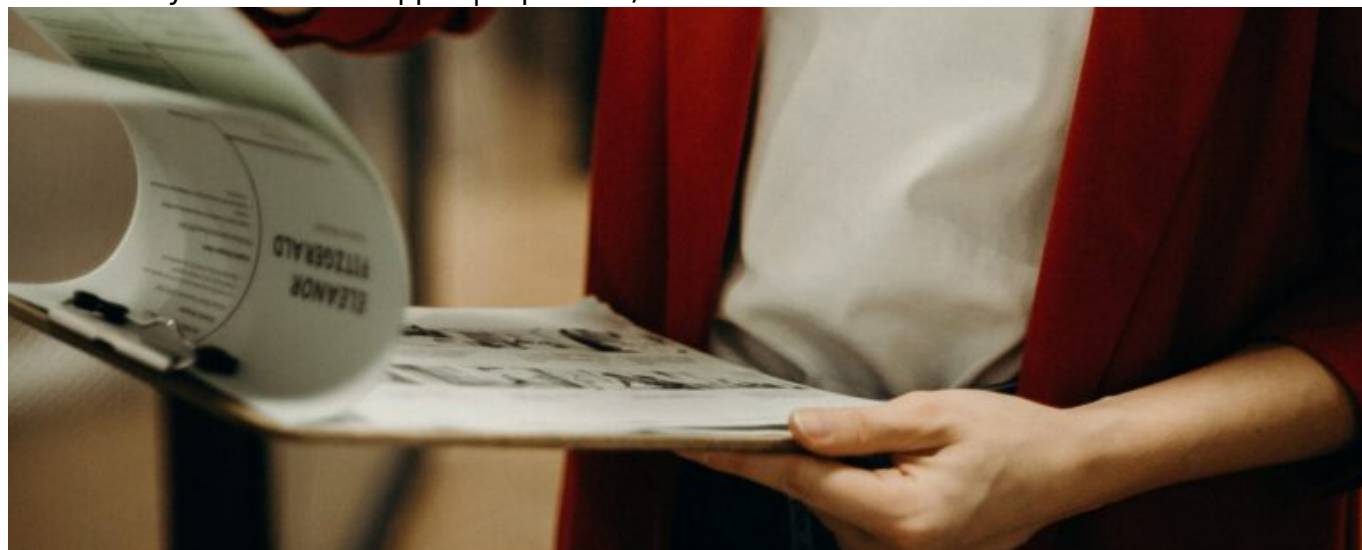


## Sec 25 Of The Payment And Settlement Act - A Useful Mechanism For The Recovery Of Money?

written by Naksha G Sappe | April 7, 2022



There has been rapid progression with respect to the methods of due diligence in the field of Financial Technology (FinTech) in the last few years; this has led to an increased number of transactions, non-banking players, multiple online payments etc. Global non-cash transactions rose 12% to reach USD 539 billion during 2016-17. In World Payments Report 2019, it has been estimated that global non-cash transaction volumes will soon be reaching a record 14% (CAGR) from 2017 through 2022.<sup>[1]</sup> c The Reserve Bank of India, to regulate this evolving industry, has time and again issued directions, guidelines, and policies. A noteworthy development has been the Payment and Settlement Act 2007 ("PSS Act").

The PSS Act is a fundamental law that regulates and administers the payment system in India, which is necessarily what ensures a healthy circulation of money in any economy and RBI (as the designated authority under the PSS Act) regulates and supervises payment systems and its participants.

Section 25 Of the Payment and Settlement Act 2007

The crux of Section 25 of the Payment and Settlement Act 2007 is that when an electronic transfer of funds cannot be executed due to insufficient funds or if the amount to be executed exceeds the credit limit of the payer, then the payer is liable to be either imprisoned for 2 years or fined an amount which is twice the amount of the electronic funds' transfer or both<sup>[2]</sup>. The Section provides that an act of dishonouring an electronic transfer of funds is an offence. The Section also provides for acts that are considered an offence:

1. Initiating an electronic fund transfer to pay any amount of money to discharge another person of any debt or liability by paying wholly or in part;
2. Initiating an electronic funds transfer not in accordance with relevant procedural guidelines from the system provider;
3. When a demand is made by the beneficiary for the payment by issuing a notice in writing to the person initiating the electronic funds' transfer within 30 days of the receipt of information by them from the bank concerned regarding the dishonour of the electronic funds' transfer; and further, when the beneficiary does not receive the payment by the person initiating the payment within 15 days of the receipt of the said notice.

Subject to complying with the procedures stipulated under the Payment and Settlement Act 2007, a defaulter can be criminally prosecuted in such cases. This Section was introduced to circumvent the dishonour of electronic payment instructions.

Section 25 Of Payment and Settlement Act Act R/W Section 138 Of the NI (Negotiable Instruments) Act

It is pertinent to note that Section 25(5) attracts the applicability of Chapter XVII of the Negotiable Instruments Act, 1881 to the dishonouring of an electronic funds transfer. Section 138 of the NI Act expressively gives provisions concerning the penalisation of dishonoured cheques. Both these sections make the dishonouring of electronic funds and cheques an offence punishable with imprisonment, a fine or both. The prime difference between the two is that in the case of the former, the dishonour, which is the subject matter of the offence, is of electronic funds transfer rather than of a cheque<sup>[3]</sup>.

In the case of *Ritu Jain v. The State Through Standing Counsel*<sup>[4]</sup>, the court (through standing counsel) stated that by virtue of Section 25(5) of the Payments and Settlement Act, the provisions of Chapter XVII of the Negotiable Instruments Act, 1881 (26 of 1881) shall apply to the dishonour of an electronic funds transfer to the extent the circumstances admit. Therefore, when Section 25 of the Payment and Settlement Act is invoked, Section 138 of the NI Act is also applicable as the case may be.

Section 25 Of Payment and Settlement Act Act As A Good Mechanism For Recovery Of Money

The legislature has given Section 25 of the Payment and Settlement Act the powers to safeguard and protect genuine drawers who (owing to disregard or any other reason) failed to fulfil the obligations under the electronic fund transfer. The proviso to the Section states that an electronic fund transfer initiated to be executed has been dishonoured due to insufficient funds or exceeding the credit limit or by given instructions to the banker. This section puts a strict imposition on the person initiating the payment that if they do not comply with his obligation, they will be committing an offence and will be penalized.

This ensures precaution for the person initiating the payment and offers protection to the beneficiary. The criminalization of this act infuses fear and allows the payer to comply with his obligation.

As we shift away from traditional banking mechanisms to more technologically-driven systems, it becomes pressingly crucial to protect the interests of the beneficiary in ensuring the payer is fulfilling their obligations. India has made significant strides in modes of electronic fund transfers. RBI promotes electronic fund transfers and time and again regulates these transactions with new guidelines. Regarding the dishonour of electronic funds transfer, the chief manager of RBI issued a clarification<sup>[5]</sup> stating that Section 25 of the Payment and Settlement Act offers the same rights and remedies that are available in Section 138 of the NI Act and that the act of dishonouring a cheque is a punishable offence.

It can be seen from these steps that the government is -- by offering such rights and remedies to beneficiaries -- eager to promote and popularize electronic fund transfers.

Further, the RBI also published Payments and Settlements Systems in India: Vision 2019-2021<sup>[6]</sup> which carried the core theme of "Empowering Exceptional

(E)payments Experiences" intending to empower Indian citizens with access to various electronic payments options which are secure, safe, quick, convenient and affordable. The RBI assures that with further innovation and the entry of more participants, the payment system landscape will continue to change, which is expected to ensure the best cost for customers and more freedom to use multiple payment system options.

Endnote

It's safe to say that criminalizing the act of dishonouring a transfer of electronic funds goes a long way in ensuring the prompt payments regardless of if they are due or overdue. Section 25 of the Payment and Settlement Act offers that strict provision; since the section clearly states that before complaining under the said Act for recovery of money, the payee must intimate the payer vide a written notice seeking the payment of the dishonoured money or the payer will be punished. Section 25 of the Payment and Settlement Act is both a precaution and protection hence, making it an excellent, well-thought-out mechanism for the recovery of money.

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- [1] World Payments Report 2019, Capgemini, available at <https://www.sogeti.com/explore/reports/world-payments-report-2019/#:~:text=Non%2DCash%20Payments%20Volume,14%25%20during%202017%2D2022F>.
  - [2] Section 25 of Payment and Settlement Act 2007
  - [3] Ritu Jain v. The state through standing counsel (Crl.M.C.555/2016, Crl.M.A.2315/2016)
  - [4] Crl.M.C.555/2016, Crl.M.A.2315/2016
  - [5] DOC/2011-12/191, DPSS. CO.PD.No.497/02.12.004/2011-12
  - [6] Press Release: 2018-2019/2687

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