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Dud cheques to recover loans, not goons

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MUMBAI: What if RBI asks banks to stop sending goons to your house to recover dues when you default on loans? Lenders have found a way to send policemen for the same, using an Act that was first introduced during the Raj in 1881.

Banks have found a way to project you as an offender by bouncing cheques, which you gave them unsuspectingly when you borrowed.

Banks, which take blank cheques at the time of disbursing loans, fill them for the entire loan amount and deposit for collection when a borrower defaults on monthly payments, resulting in a cheque bounce. They are now saying when you can't even pay a part of the loan, pay it in full.

Sounds absurd. But the idea is not to get all the money back at once, but to use the Act as a threat to come for a settlement, rather than drag on in civil law suits. Section 138 of the Negotiable Instruments Act, which deals with dishonour of cheques, provides for two-years imprisonment, or a penalty twice the cheque amount. Also, the fact that one could appeal only after depositing 100% of the amount is seen as a deterrent.

"If borrowers miss their EMI payments, banks fill in the EMI amount — at times the full loan amount — and create a record for dishonour of cheques so that action can be taken against the defaulting customers," said VN Kulkarni of the Bank of India-backed Abhay Credit Counselling Centre. "We have seen a sharp increase in such cases in the past 2-3 months." There is no data on how many such cases are in courts.

The rising number of reports of physical assault and harassment by recovery agents of banks prompted former RBI governor YV Reddy to crack the whip on banks on November 13, 2007.

"In view of the rise in the number of litigations against banks for engaging recovery agents in the recent past, it is felt that the adverse publicity could result in serious reputation risk for the banking sector as a whole," Mr Reddy had then said, adding the central bank "would consider imposing a temporary ban or even a permanent ban in case of persistent abusive practices."

But that left banks also helpless in case of wilful defaulters and the economic slowdown compounded the problems for lenders.

"Cases filed under Section 138 have increased in the past two years, as they have been found to be both effective and conforming to the legal requirements," Amit Seth, partner at law firm Seth Associates.

"The banks are in a position to initiate proceedings under Section 138 that places considerable pressure on such defaulters to return the loan amount on time." However, some bankers believe that the fancy for Section 138 is not because of RBI, but the downturn.

"The number of such cases has gone up mainly due to the rise in delinquencies, and not the guidelines on use of recovery agents' services," said Kamlesh Rao, executive vice-president — personal finance and mortgage, Kotak Mahindra Bank. The Negotiable Instruments Act may be a good instrument to threaten a defaulter, but has pitfalls. The bank may not get the money back, but could end up sending someone to prison for two years, leaving both losers.

"Whether the accused is sentenced to imprisonment or ordered to pay a fine is at the

court's discretion," said Shafaq Uraizee-Sapre, senior associate with law firm Nishith Desai Associates. "Therefore, there is no assurance that banks will recover their dues under Section 138 proceedings."

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