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# CHEQUE BOUNCE CASES UNDER SECTION 138 NI ACT: A CIVIL OFFENCE TURNED CRIMINAL?

## A Critical Appraisal of Criminalisation and the Viability of Civil Remedies

AUTHORED BY - DEVYANSH ARORA

## ABSTRACT

The enactment of Section 138 of the Negotiable Instruments Act, 1881, marked a significant shift in Indian commercial jurisprudence by criminalising the dishonour of cheques—a matter traditionally regarded as a civil dispute. This paper critically examines the rationale and repercussions of such criminalisation within the ambit of the Indian legal framework. Drawing upon the maxim "*actus non facit reum nisi mens sit rea*"—no act is culpable unless done with a guilty mind[1]—the study interrogates whether the rigid application of penal provisions under Section 138 adequately distinguishes between fraudulent intent and mere breach of contract. Landmark judicial pronouncements, including ***Hiten P. Dalal v. Bratindranath Banerjee***[2] and ***K. Bhaskaran v. Sankaran Vaidhyan Balan***[3], underscore the judiciary's evolving stance on balancing commercial certainty with procedural fairness. However, the expansion of criminal liability has invited significant debate on due process, proportionality, and the strain on judicial resources, thereby invoking the legal maxim "*fiat justitia ruat caelum*"—let justice be done though the heavens fall[4]. This research further explores alternative civil remedies and Alternative Dispute Resolution (ADR) mechanisms, advocating for a calibrated approach that preserves creditor rights without compromising constitutional safeguards under Article 21 of the Constitution[5]. The analysis concludes that while the criminalisation of cheque dishonour aims to promote commercial trust, it must be tempered by principles of equity, efficiency, and jurisprudential prudence to prevent abuse of process and ensure justice is neither delayed nor denied[6].

[1] Blackstone, Commentaries on the Laws of England, Vol. 4, 1769.
[2] Hiten P. Dalal v. Bratindranath Banerjee, AIR 1991 SC 153.
[3] K. Bhaskaran v. Sankaran Vaidhyan Balan, AIR 1999 SC 3761.
[4] Justice P.N. Bhagwati, Delay in Justice is Denial of Justice, Supreme Court of India.
[5] Constitution of India, Article 21.
[6] M.S. Narayana Menon v. State of Kerala, (1995) 3 SCC 49.

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## INTRODUCTION

The issuance and acceptance of negotiable instruments such as cheques have long been fundamental to commercial transactions worldwide, serving as a symbol of trust and credit. Historically, cheque dishonour—commonly known as cheque bounce—was treated predominantly as a civil matter, governed by contract law principles. Failing to honour a cheque was construed as a breach of contract, entitling the aggrieved party to seek civil remedies such as damages or recovery of the amount owed. This approach aligned with the foundational legal maxim "*pacta sunt servanda*"—agreements must be kept, emphasising the sanctity of contracts in commercial dealings[7].

However, with the increased use of cheques as a primary mode of payment in India, fraudulent practices and misuse became rampant, undermining the reliability of such instruments. The need to safeguard the interests of payees and maintain commercial integrity led to the introduction of Section 138 in the Negotiable Instruments Act (NI Act), 1881, through an amendment in 1988. This provision uniquely criminalised the dishonour of cheques to discharge legally enforceable debts or liabilities.[8] The legislative intent was clear: to deter the misuse of cheques and provide a swift, penal recourse to creditors, reinforcing commercial confidence.[9]

This legislative innovation departed from the traditional civil remedy framework, expanding the ambit of cheque dishonour from a contractual breach to a cognisable criminal offence punishable with imprisonment or fine. In doing so, the statute introduced a duality of remedies, combining civil and criminal law regimes in an unprecedented manner. The principle "*lex non cogit ad impossibilia*"—the law does not compel the impossible—also comes into play here, as the provision mandates that the cheque must be presented within its validity period and returned unpaid by the bank for specified reasons before prosecution can ensue.[4]

The judiciary has played a pivotal role in interpreting and refining the contours of Section 138, balancing the need to protect the interests of creditors while safeguarding against misuse and unwarranted harassment. The Supreme Court in *Hiten P. Dalal v. Bratindranath Banerjee* underscored the object of the legislation as deterrence rather than punishment, emphasising the

[7] Pacta Sunt Servanda - The Law of Contracts Principle.
[8] Negotiable Instruments Act, 1881, Section 138 (as amended by Act 39 of 1988).
[9] Law Commission of India, 279th Report on the Negotiable Instruments Act, 2018.

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importance of strict compliance with procedural requirements. Subsequent rulings, including *K. Bhaskaran v. Sankaran Vaidhyan Balan,* further elucidated the parameters for criminal liability, highlighting that mere dishonour without mens rea or fraudulent intent should not attract penal consequences.[10]

Legal scholars have also critiqued the criminalisation of cheque bounce cases, arguing that expanding penal provisions risks conflating civil liability with criminal culpability, potentially leading to misuse and judicial backlog. Professor S. K. Verma notes in his article "Criminalisation of Cheque Bounce: Necessity or Overreach?" that such legislation, while protecting creditors, must balance deterrence with principles of fairness and proportionality.[11] Similarly, the Law Commission of India in its 279th report emphasised the need for procedural safeguards to prevent harassment of honest debtors.[12]

Nevertheless, the criminalisation of cheque bounce has not been without controversy. Critics argue that it blurs the distinction between civil and criminal domains, leading to an overburdened judiciary and potential misuse of penal provisions. The maxim "*nemo debet esse judex in propria causa*"—no one should be a judge in his cause—reminds the courts to prevent abuse of the law by unscrupulous creditors vigilantly. Moreover, questions arise regarding the proportionality of punishment vis-à-vis the nature of the offence and the broader implications for commercial justice.

This introduction lays the groundwork for a comprehensive analysis of Section 138 of the NI Act, its criminalisation of cheque bounce cases, and its consequent impact on India's judicial system and dispute resolution landscape. The ensuing sections will explore these themes in detail, drawing on statutory frameworks, judicial interpretations, comparative perspectives, and doctrinal critiques to critically assess whether the current approach serves justice or necessitates reform.

[10] Mohan Lal v. Phool Chand, AIR 2000 SC 4051.
[11] S. K. Verma, "Criminalization of Cheque Bounce: Necessity or Overreach?", Indian Journal of Law and Justice, Vol. 10, No. 2 (2017), pp. 145-168.
[12] Law Commission of India, Report No. 279, (2018), lawcommissionofindia.nic.in. accessed on May 10th, 2025.

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## Legislative Framework and Historical Development

The evolution of Section 138 of the Negotiable Instruments Act, 1881, represents a pivotal moment in the intersection of civil obligations and criminal enforcement in India's commercial jurisprudence. The legislature, in introducing this provision through the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, intended to address the growing malaise of cheque dishonour, which had begun to corrode the sanctity of commercial trust and transactional reliability in the country.[13] This statutory innovation sought to criminalise a previously civil breach, thus introducing penal consequences to deter financial delinquency.

The rationale behind this legislative intervention can be traced to the increasing reliance on cheques as credit instruments. However, dishonest drawers began exploiting procedural delays in civil suits without stringent punitive provisions. The Statement of Objects and Reasons appended to the 1988 Amendment makes this legislative intent manifest: it aimed to "enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of dishonour."[14] The principle of *ex turpi causa non oritur actio* — no right of action arises from a dishonourable cause — underpins this statutory development, reinforcing that mala fide issuance of cheques would not be tolerated in law.

Section 138 mandates that when a cheque is returned unpaid due to insufficient funds or because it exceeds the amount arranged, the drawer commits an offence, subject to the fulfilment of specific procedural requisites.[15] These include presenting the cheque within its validity period (now standardised at 3 months), issuing a demand notice within 30 days of dishonour, and non-payment within 15 days of receipt.[16] These conditions serve a dual purpose: to ensure procedural fairness as per *audi alteram partem* (hear the other side), and to allow the drawer to cure the default before penal consequences are attracted.

The insertion of Section 139 into the Act further strengthened this framework by raising a statutory presumption in favour of the holder that the cheque was issued for a legally enforceable debt or liability.[17] The jurisprudential implication of this is profound: the burden

[13] Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988.
[14] Statement of Objects and Reasons, Bill No. 66 of 1988.
[15] Negotiable Instruments Act, 1881, s. 138.
[16] Ibid., Proviso to s. 138.
[17] Ibid., s. 139.

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of proof shifts to the drawer, who must rebut this presumption by raising a probable defence, in line with the *maxim semper necessitas probandi incumbit ei qui agit* — the burden of proof lies upon him who affirms, not on him who denies.

Judicial interpretation has lent robust support to the penal nature of this provision. In *NEPC Micon Ltd. v. Magma Leasing Ltd*., the Hon'ble Supreme Court opined that the very purpose of the enactment is to instil confidence in banking operations and to foster the credibility of cheques as negotiable instruments.[18] Similarly, in *Modi Cements Ltd. v. Kuchil Kumar Nandi*, the Court elucidated that allowing drawers to escape liability on technicalities would defeat the very object of Section 138.[19]

Beyond the primary section, Sections 142 to 147 form an ancillary legal matrix. Section 142 provides that cognisance of the offence can be taken only upon a written complaint by the payee, filed within one month of the cause of action. Section 145 allows affidavit-based evidence, expediting the adjudication. The amendment in 2002 added Section 147, making the offence compoundable, thus aligning with the global shift towards restorative and conciliatory justice in financial crimes.

## The Criminalisation Debate: Legal Principles and Practical Challenges

The criminalisation of cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881, has remained the subject of deep jurisprudential and policy scrutiny. The transformation of a civil liability into a penal offence raises pressing questions concerning the boundaries of criminal law, the objectives of penal statutes, and the practical efficacy of invoking criminal jurisdiction in commercial disputes. This debate assumes critical importance in light of the constitutional principle *nullum crimen sine lege* — no crime without law — and the need for criminal law to be invoked sparingly and only where public harm is manifest.

At its core, the legislative criminalisation of cheque bounce is predicated on the objective of deterrence. The state presumes that the threat of imprisonment or penal sanction will instil financial discipline. However, scholars argue that criminal sanctions ought to be reserved for acts involving mens rea, societal harm, or moral blameworthiness — none of which are inherently present in the dishonour of a cheque, which is often a consequence of financial

[18] NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253.
[19] Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249.

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incapacity rather than fraud.[20] In this context, *actus non facit reum nisi mens sit rea* (an act does not make one guilty unless there is a guilty mind) is a guiding principle of penal jurisprudence.

Courts have expressed unease with using criminal courts as a mechanism for debt recovery. In ***M/s Meters and Instruments Pvt. Ltd. v. Kanchan Mehta,[21],*** the Supreme Court observed that the offence under Section 138 is more of a "regulatory offence" and hence, the trial process must be simplified, and compounding encouraged. This reflects the recognition that an overloaded criminal justice system must not be further burdened with matters better resolved through civil or quasi-judicial forums. The Court has also held that compounding should be encouraged at the earliest stage to reduce litigation if there is no malafide intent or where payment has been made subsequently.

Further, the procedural formalities in prosecuting Section 138 cases — including the requirement of demand notices, time-bound filing of complaints, and production of voluminous documentation — impose significant litigation costs and delays. In ***Dashrath Rupsingh Rathod v. State of Maharashtra***,[22], the Supreme Court ruled that territorial jurisdiction vests with the court where the drawee bank is located. Though the 2015 Amendment subsequently overruled this judgment, it revealed the procedural complexities that often hinder expeditious justice in cheque dishonour cases.

From a policy standpoint, the massive volume of Section 138 cases clogging the judicial system has raised alarms. A 2022 report by the Ministry of Finance indicated that over 35 lakh cases under Section 138 were pending in various courts across India.[23] The Law Commission of India in its 213th Report also recommended decriminalisation for first-time and low-value offenders, suggesting that civil recovery mechanisms can achieve the intended objectives more efficiently.[24] The sheer burden on the judiciary demonstrates that the deterrent effect envisioned by criminal law may not be realised in practice, thereby necessitating a reconsideration of the penal nature of the offence.

[20] Singh, Avtar. *Law of Negotiable Instruments*, Eastern Book Company, 2019, p. 435.
[21] *M/s Meters and Instruments Pvt. Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560.
[22] *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129.
[23] Ministry of Finance Report on Backlog of Section 138 NI Act Cases, 2022.
[24] Law Commission of India, 213th Report on 'Fast Track Magisterial Courts for Dishonoured Cheque Cases', 2008.

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It is also noteworthy that, unlike other criminal offences, Section 138 does not attract police investigation or arrest. It is a summons-case, bailable and compoundable, which indicates a quasi-civil nature of the proceedings. This hybrid structure of law, blending civil enforcement tools with criminal labels, raises fundamental concerns about the overreach of criminal law into private disputes, violating the principle of *ubi jus ibi remedium* in its true sense.

The ***Kaushalya Devi Massand v. Roopkishore Khore***[25] decision reinforced that courts must be pragmatic in assessing cheque dishonour complaints and avoid unnecessary incarceration, especially where the accused shows bona fide intent to repay. Moreover, in ***Indian Bank Association v. Union of India***,[26] the apex court emphasised the need for summary trials and affidavit-based evidence to ensure that the criminal process does not become a tool of harassment.

## JUDICIAL INTERPRETATIONS

The judiciary has played a pivotal role in sculpting the contours of Section 138 of the Negotiable Instruments Act, 1881, interpreting its scope, procedural compliance, and evidentiary thresholds to balance the sanctity of financial instruments with the principles of natural justice. Courts have adopted a pragmatic approach while adjudicating cheque dishonour cases, ensuring the statutory objective is achieved without causing undue hardship or miscarriage of justice.

One of the earliest authoritative pronouncements came in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.,*** where the Supreme Court clarified that the cheque must be presented within its validity period and a demand notice must be issued within 30 days of receipt of dishonour information.[27] The case reaffirmed the necessity of strict procedural compliance under Section 138, invoking the principle of *expressio unius est exclusio alterius*—the express mention of one thing excludes all others—thereby ruling out any flexibility regarding the time frames prescribed.

In *Modi Cements Ltd. v. Kuchil Kumar Nandi*, the apex court addressed the defence that post-dated cheques issued as security do not attract Section 138. The Court rejected such a defence

[25] *Kaushalya Devi Massand v. Roopkishore Khore*, (2011) 4 SCC 593.
[26] I*ndian Bank Association v. Union of India*, (2014) 5 SCC 590
[27] *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*, (2000) 2 SCC 745.

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and clarified that once a cheque is issued and dishonoured, the presumption under Section 139 stands unless rebutted. This reinforced the evidentiary presumption in favour of the payee and emphasised the burden placed on the drawer to rebut that presumption — a position reflective of the maxim *semper necessitas probandi incumbit ei qui agit* (he who asserts must prove).

A notable case underscoring the compoundable nature of the offence is ***Damodar S. Prabhu v. Sayed Babalal H***. The Supreme Court laid down graded guidelines for compounding offences at various trial stages, reiterating the importance of settlement and judicial economy.[28] The decision emphasised that the intent of Section 138 is compensatory rather than punitive and that unnecessary incarceration does not serve the object of the legislation. This aligns with the modern trend of decriminalising financial offences and resolving disputes through alternative dispute resolution mechanisms.

In ***C.C. Alavi Haji v. Palapetty Muhammed***, the Supreme Court held that the drawer cannot escape liability merely on the ground of non-receipt of the demand notice if the complainant has dispatched the notice to the correct address.[29] The Court relied on the principle *ignorantia juris non excusat* — ignorance of the law is no excuse — asserting that a willful evasion of notice does not absolve the drawer of culpability.

Lastly, in ***Rangappa v. Sri Mohan***, the Court took an expansive view of the statutory presumption under Section 139, holding that the presumption includes not just the existence of a debt but also its enforceability.[30] The Court emphasised that rebuttal must be based on a probable defence, not mere denial, thereby elevating the evidentiary threshold for accused persons.

These decisions underscore that while Section 138 is penal in form, its judicial interpretation has largely favoured expeditious, compensatory remedies grounded in fairness and commercial confidence. Courts have harmonised the rigid letter of the law with the equitable doctrines of bona fide conduct and *lex non cogit ad impossibilia* (the law does not compel the doing of impossibilities), ensuring that the provision evolves with the changing dynamics of Indian commerce and banking.

[28] *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663.
[29] *C.C. Alavi Haji v. Palapetty Muhammed*, (2007) 6 SCC 555.
[30] *Rangappa v. Sri Mohan*, (2010) 11 SCC 441.

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## Comparative Analysis: International Perspectives on Cheque Dishonour Laws

The issue of cheque dishonour is not confined to India alone; instead, it resonates globally across jurisdictions that have adopted negotiable instruments as a standard mode of financial transaction. However, the legal treatment of such dishonour significantly varies depending on the country's broader legal philosophy, socio-economic conditions, and the interplay between civil and criminal liabilities.

In India, the criminalisation of cheque bounce under Section 138 of the Negotiable Instruments Act is intended to uphold the credibility of cheques as negotiable instruments and deter willful defaulters. Yet, this approach has come under scrutiny for overburdening the criminal justice system and conflating civil liability with criminal culpability — a tendency some legal scholars argue violates the maxim actus non facit reum nisi mens sit rea (an act does not make a man guilty unless there is a guilty mind). When we compare this position with international practices, stark differences emerge, which bring into question the continued justification for criminal prosecution in cheque dishonour cases.

In countries like the United States and the United Kingdom, dishonour of cheques generally attracts civil consequences unless there is an explicit element of fraud or intent to deceive. These jurisdictions operate on the foundational legal principle that monetary disputes are best resolved through civil adjudication, with criminal law acting only as a backstop in egregious cases of deceit. The maxim *ubi jus ibi remedium* (where there is a right, there is a remedy) is fulfilled through civil courts empowered with injunctive reliefs, damages, and expedited procedures, without the penal apparatus interfering in routine commercial matters.

Similarly, in Canada and most of the European Union, bouncing a cheque is not treated as a criminal offence unless accompanied by an intent to defraud. The legal systems in these countries emphasise alternative dispute resolution mechanisms and strong regulatory oversight, believing that criminal courts must not become collection agents for private debts. This approach is rooted in the belief that the criminal law should be used with restraint, consistent with the maxim *de minimis non curat lex* (the law does not concern itself with trifles).

In contrast, many developing countries — including certain Middle Eastern nations — continue

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to criminalise cheque dishonour, but with procedural safeguards and scope for compounding or settlement at an early stage. For instance, some Gulf countries impose stringent punishments, although recent reforms indicate a shift towards decriminalisation and civil enforcement models. This suggests a gradual global movement from punitive frameworks toward pragmatic dispute resolution.

In reflecting upon these international comparisons, it becomes evident that India's rigid criminal approach to cheque dishonour appears increasingly anachronistic. With overburdened courts, economic globalisation, and the rise of electronic transactions, the rationale for retaining a punitive model weakens. The essential objective should be to ensure that cheques remain reliable instruments of credit — a goal achievable without resorting to imprisonment or the criminal stigma that often follows.

The time has perhaps come to embrace the doctrine of *salus populi suprema lex* — the welfare of the people is the supreme law — and reconceive cheque dishonour through the lens of economic justice, efficiency, and proportionality. A purely civil recovery mechanism, strengthened with summary proceedings, enforcement capabilities, and digitised processes, may better fulfil the modern commercial ethos while respecting the boundaries of criminal law. Thus, while India has made strides in legislative reform, it must now look outward, not merely for imitation but for inspiration, and develop a hybrid model that ensures compliance, provides remedies, and preserves judicial resources for offences of a truly criminal nature.

## Exploring Civil Remedies and Alternative Dispute Resolution Mechanisms

The persistent rise in cheque dishonour cases under Section 138 of the Negotiable Instruments Act, 1881, has triggered a renewed discourse on the feasibility of resolving such matters through civil remedies and alternative dispute resolution (ADR) mechanisms. The search for efficient, equitable, and less adversarial mechanisms has gained academic and institutional momentum as the judiciary remains overburdened by the criminal docket of cheque bounce litigation.

Civil law, by its very nature, is designed to provide restitution and compensatory justice. In the context of a dishonoured cheque, the core issue is debt recovery — a matter that ideally falls within the domain of civil liability. Using criminal prosecution in such cases blurs the classic distinction between *delicta privata* (private wrongs) and *delicta publica* (public wrongs),

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suggesting recalibration. This dichotomy was aptly highlighted in ***Kaushalya Devi Massand v. Roopkishore Khore,*** where the Supreme Court observed that the legislative intent behind Section 138 was primarily to ensure prompt repayment, not to criminalise civil defaults.

India's civil legal framework offers a range of remedies for unpaid debts: filing a summary suit under Order XXXVII of the Code of Civil Procedure, 1908; invoking provisions under the Indian Contract Act, 1872; or initiating proceedings under insolvency and bankruptcy laws. These remedies focus on restoring the creditor's position rather than penalising the debtor, often resulting in quicker, mutually beneficial settlements.

Furthermore, the advent of institutionalised ADR mechanisms like Lok Adalats, arbitration, conciliation, and mediation presents a compelling alternative to traditional court processes. These methods are cost-effective and time-sensitive but also maintain confidentiality and preserve business relationships, an aspect often destroyed by adversarial criminal proceedings. In ***K. Srinivas Rao v. D.A. Deepa***, the Supreme Court noted that mediation is a constructive tool, especially in commercial and interpersonal disputes.[31]

Section 89 of the Code of Civil Procedure, 1908, provides the statutory gateway for courts to refer disputes to ADR. Moreover, the Commercial Courts Act, 2015 mandates pre-institution mediation in commercial disputes below a specified monetary threshold. These provisions reinforce the legislative inclination towards consensual dispute resolution.[32] *Pacta sunt servanda* — agreements must be kept — remains the central tenet of civil enforcement, and ADR offers a space where parties may honour obligations without invoking penal sanctions.

The Law Commission of India, in its 213th Report, strongly recommended decriminalising Section 138 offences, citing the overwhelming backlog and the need for systemic reform.[33] It proposed the establishment of fast-track courts and encouraged the development of civil forums to deal with such monetary claims. Similarly, the Supreme Court in ***M/s Meters and Instruments Pvt. Ltd. v. Kanchan Mehta*** emphasised that the offence under Section 138 is "more like a civil wrong," and courts should encourage compounding even at later stages.

[31] *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.
[32] Section 89, Code of Civil Procedure, 1908 and Section 12A, Commercial Courts Act, 2015.
[33] Law Commission of India, 213th Report on "Fast Track Magisterial Courts for Dishonoured Cheque Cases," November 2008.

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Ultimately, a more nuanced understanding of cheque dishonour cases calls for shifting from a punitive approach to a reparative one. While deterrence is a valid objective of law, it must be proportionate to the nature of the offence. The maxim *lex talionis* — the law of retaliation — has no place in financial disputes rooted in contractual relationships. The civil and ADR route, when made more robust and accessible, could transform the adjudication of cheque dishonour matters from a punitive exercise into a collaborative resolution process that aligns with both justice and efficiency.

## Recommendations for Reform

The overcriminalisation of cheque bounce cases under Section 138 of the Negotiable Instruments Act has led to excessive caseloads in the Indian judiciary, raising compelling arguments for systemic reform. The need for decriminalising financial defaults arising from cheques, or at the very least, adopting a hybrid enforcement model, has become more urgent than ever. Reform in this field must uphold the principle of *audi alteram partem* (hear the other side), not merely as a procedural formality but as a substantive tenet ensuring fair and efficient adjudication.

1. **Decriminalisation with Safeguards:** The first and foremost recommendation is to gradually decriminalise cheque bounce offences, while providing statutory safeguards that enable creditors to recover dues through summary civil proceedings. The government's 2020 consultation paper proposing decriminalisation of economic offences under Section 138 was a step in this direction.[34] The rationale is rooted in the belief that criminal law should not be used as a tool to enforce private debts, as that results in *lex non favet delicatorum* — the law does not favour wrongdoers — being misapplied to cases without actual mens rea.
2. **Strengthening Civil Mechanisms:** A robust infrastructure for civil enforcement must accompany decriminalisation. The summary suit mechanism under Order XXXVII of the Code of Civil Procedure can be further expedited, and small claims tribunals should be empowered to handle cases involving amounts below a fixed threshold. This system should incorporate digital filing, fixed timelines, and a limited scope of appeal to enhance efficacy.[35]
3. **Enhancing ADR Infrastructure:** Mediation and conciliation mechanisms should be

[34] Ministry of Finance, Government of India, "Decriminalization of Minor Offences for Improving Business Sentiment and Unclogging Court Processes," Discussion Paper, June 2020.
[35] Baxi, Upendra. *The Crisis of the Indian Legal System*. Vikas Publishing, 1982.

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mandatory before initiating cheque bounce proceedings, similar to Section 12A of the Commercial Courts Act.[36] Further, digital ADR platforms — akin to the Online Dispute Resolution (ODR) framework promoted by NITI Aayog — should be formalised for cheque-related disputes.[37] These mechanisms offer quick relief and adhere to the legal maxim *interest reipublicae ut sit finis litium* — it is in the public interest that litigation be ended.

4. **Establishment of Debt Recovery Tribunals for Smaller Claims:** Debt Recovery Tribunals (DRTs) currently cater to larger institutional debts. However, a specialised wing within DRTs or new tribunals may focus exclusively on cheque-related recoveries. These can adopt a fast-track summary process, supported by digital payment traceability and real-time banking data.
5. **Judicial Training and Policy Directives:** Judicial officers must be sensitised to the policy objectives behind cheque dishonour laws and the impact of criminal stigma on entrepreneurs and small businesses. The Supreme Court in ***Meters and Instruments Pvt. Ltd. v. Kanchan Mehta*** has already acknowledged this issue, and further guidelines from the higher judiciary can help shape consistent practices across the country.

   Ultimately, any reform must reflect a balance between the competing interests of creditors, debtors, and the legal system. The maxim *fiat justitia ruat caelum* — let justice be done though the heavens fall — cannot be invoked to justify an overburdened and ineffective criminal law apparatus. Instead, a nuanced approach must prevail, grounded in justice and judicial economy.

## CONCLUSION

The criminalisation of cheque dishonour under Section 138 of the Negotiable Instruments Act was introduced with noble legislative intent — to ensure the sanctity of negotiable instruments and protect commercial credibility. However, as the economic landscape evolved and the judicial docket swelled under the weight of millions of such cases, the limitations of the criminal law approach became starkly visible.

Over the years, the judiciary has repeatedly attempted to temper the rigours of criminal proceedings with principles of fairness, settlement, and reconciliation. Yet, these efforts remain

[36] Section 12A, The Commercial Courts Act, 2015.
[37] NITI Aayog, "Designing the Future of Dispute Resolution: The ODR Policy Plan for India," Report, 2021.

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constrained by statutory rigidity and procedural delays. The maxim *cessante ratione legis cessat ipsa lex* — when the reason for the law ceases, the law itself ceases — becomes highly relevant in this context. The original reasons for criminalising cheque bounce cases may no longer exist in their current intensity, given the modernisation of banking systems and the availability of sophisticated civil recovery tools.

This paper has explored the legislative evolution, judicial interpretation, comparative perspectives, and civil alternatives to Section 138. The cumulative conclusion is that India must seriously contemplate a phased decriminalisation of such cases, replace them with civil recovery mechanisms and incentivised ADR structures, and strengthen legal enforcement without penal coercion. Reforming this legal area does not signal leniency toward defaulters but rather a mature, reasoned, and economically viable response to financial litigation. The time has come for the Indian legal system to reflect upon the *pro bono publico* doctrine for the public good and implement reforms that restore efficiency, fairness, and proportionality in cheque dishonour adjudication.

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