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JUSTICE DEFERRED, COURTS OVERWHELMED: A CRITICAL EXAMINATION OF SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 AS A STRUCTURAL DRIVER OF TRIAL COURT CONGESTION IN INDIA

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ABSTRACT

When Parliament inserted Section 138 into the Negotiable Instruments Act, 1881 through the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, its aim was narrow and precise: to give cheques the weight of a legal obligation by making their dishonour a criminal matter. The provision worked. It worked so well that cheque dishonour complaints today constitute nearly one-fifth of all criminal cases pending before India's district courts — a caseload burden that has persisted through three legislative amendments, multiple Supreme Court interventions, and over a decade of administrative reform without meaningful reduction. This paper investigates the structural roots of this judicial gridlock. It analyses how the provision's quasi-strict liability design, the routine misuse of the Section 138 mechanism by financial institutions for civil debt recovery, the comprehensive failure of the Section 143 summary trial mandate, the paradox whereby India's UPI revolution has concentrated rather than reduced cheque-based litigation in under-resourced district courts, and the jurisdictional snares of the Section 142 limitation regime have together produced a crisis that neither judicial exhortation nor decriminalisation can adequately address. Through comparative analysis of England's and Singapore's civil enforcement regimes, the paper interrogates the Ministry of Finance's 2020 proposal to remove criminal liability for cheque dishonour and finds it constitutionally troubling and practically counterproductive. In its place, the paper argues for a legislatively anchored reform framework: compulsory pre-dispute mediation under the Mediation Act, 2023; a value-stratified adjudication model with dedicated cheque dishonour courts; consolidated proceedings that prioritise compensation over imprisonment; and a requirement for judicial impact assessment before any future amendment to high-volume criminal provisions.

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Keywords: *Section 138, Negotiable Instruments Act 1881, cheque dishonour, judicial pendency, decriminalisation, trial court backlog, ADR, Mediation Act 2023.*

1. INTRODUCTION

India's legal relationship with the dishonoured cheque has undergone a quiet revolution over the past four decades — one that has enriched complainants' procedural options while quietly suffocating the courts tasked with delivering on those options. The Negotiable Instruments Act, 1881 ('NI Act') began as an entirely civil instrument: a codification of mercantile law governing promissory notes, bills of exchange, and cheques, with no penal dimension. A payee whose cheque was returned unpaid had only the civil courts and their notoriously slow recovery machinery.

That changed in 1988, when Parliament — responding to an epidemic of commercial fraud and collapsing confidence in cheque-based transactions — inserted Chapter XVII into the NI Act through the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, effective 1 April 1989.[1] The new provision created a criminal offence that was deliberately calibrated to be easy to establish: once a cheque drawn in discharge of a debt was returned unpaid and the drawer failed to meet a statutory payment demand within 15 days, the offence crystallised — carrying a custodial term of up to two years, a monetary penalty up to twice the cheque amount, or both.[2]

The logic of deterrence was sound and the Supreme Court affirmed it in *Modi Cements Ltd. v. Kuchil Kumar Nandi,*[3] holding that the provision existed to promote confidence in banking operations and ensure that cheques retained their character as reliable commercial instruments. What the legislature could not have foreseen was the sheer arithmetic consequence of that design choice. By the time the Law Commission examined the situation in its 213th Report, more than 38 lakh cheque dishonour cases lay pending across the country.[4] A decade later, the figure had barely moved: 35.16 lakh cases in December 2019, representing roughly 15% of all criminal docket load.[5] In Delhi, Section 138 cases account for nearly half of all criminal matters at the magistracy level.[6]

The irony could not be sharper. A provision designed to discipline commerce and spare the civil courts has produced a crisis of precisely the kind it was meant to prevent — except that the overwhelmed courts are now the criminal ones. DAKSH's analysis of over 3.6 lakh Section

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138 cases across 144 districts in 21 states revealed that every single district in India was failing the six-month summary trial mandate: the best-performing districts still averaged over two years to disposal, while Gujarat's district courts averaged nearly a decade.[7] Empirical research on the structure of Section 138 litigation confirms that this congestion is driven not by isolated individual defaults but by systematic institutional filing patterns, with peer-reviewed analysis identifying the ease of filing, inadequate ADR infrastructure, and misuse of the provision as tools of commercial coercion among the primary contributors to rising litigation volume.[8]

This paper examines that crisis systematically. Part 2 sets out the research framework. Part 3 traces the legislative evolution of Section 138. Part 4 diagnoses the structural causes of docket overload. Part 5 analyses the decriminalisation debate with comparative reference. Part 6 surveys the Supreme Court's reformist jurisprudence. Part 7 proposes a reform framework. Part 8 concludes.

2. RESEARCH FRAMEWORK

2.1 Research Objectives

This paper pursues the following research objectives:

1. To trace the legislative history and evolution of Section 138 of the NI Act, including successive amendments and their judicial reception, with attention to the gap between legislative intent and operational reality.
2. To identify and analyse the structural causes of the Section 138 docket explosion — including the strict liability design, institutional misuse, the UPI displacement effect, and the limitation trap — through empirical data and doctrinal analysis.
3. To evaluate the Ministry of Finance's 2020 decriminalisation proposal through comparative analysis of England and Singapore's civil enforcement regimes.
4. To survey the Supreme Court's reformist jurisprudence on Section 138 pendency and assess its practical translative impact on trial court disposal.
5. To formulate a statutory reform framework — anchored in the Mediation Act, 2023, the Commercial Courts Act, 2015, and the Legal Services Authorities Act, 1987 — that preserves Section 138's deterrent function while restoring operational capacity to the trial courts.

2.2 Research Questions

The paper addresses the following research questions:

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1. Is Section 138 of the NI Act a structurally defective provision, or is the judicial pendency it generates a product of systemic institutional failures in the courts machinery that delivers it?
2. Does the Ministry of Finance's 2020 decriminalisation proposal address the root cause of trial court congestion, or does it merely shift the judicial burden from criminal to civil courts without resolving the underlying structural problem?
3. What lessons do the civil enforcement models of England and Singapore offer for Indian legislative reform, and under what conditions — if any — are those models transplantable to the Indian judicial context?
4. What legislative, procedural, and institutional reforms are necessary to reduce Section 138 pendency to levels consistent with the constitutional right to speedy trial guaranteed by Article 21?

2.3 Research Problem

At the heart of this paper lies a legislative paradox that Indian law has not yet found the vocabulary to adequately resolve. Section 138 of the Negotiable Instruments Act, 1881 is, by most empirical measures, both the most effective commercial deterrent in India's statute book and the most destructive source of criminal court congestion. The same provision that disciplines millions of cheque-based transactions annually is simultaneously responsible for one in every five criminal cases pending before India's district courts. That paradox is not incidental; it is structural. The volume of Section 138 litigation is a direct function of the provision's utility. Complainants file because the mechanism works: it compels appearance, applies pressure, and produces outcomes that the civil courts cannot reliably deliver. The result is a criminal justice system that has been quietly co-opted into functioning as India's primary commercial debt-recovery apparatus. The Section 143 summary trial mandate — designed to ensure disposal within six months — has been comprehensively defeated by this volume. The problem has a further dimension that scholarly analysis has neglected: India's UPI revolution, far from reducing cheque-based litigation, has merely displaced it to district courts with the least infrastructure to handle it. Against this backdrop, the paper asks whether the answer is structural reform or the decriminalisation the Ministry of Finance proposed in 2020.

2.4 Research Methodology

This paper employs a doctrinal research methodology supplemented by quantitative empirical data drawn from published institutional studies. The doctrinal analysis examines the statutory

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text of the Negotiable Instruments Act, 1881 and its successive amendments in conjunction with Supreme Court and High Court decisions sourced from SCC Online and the Supreme Court's official case repository. Legislative materials — including Law Commission Reports, Parliamentary debates, and ministerial consultation papers — are treated as primary interpretive sources.

Empirical data is drawn from DAKSH's 2017 study and the 2022 SSRN paper by Sanyal and Gulati, which together provide district-level disposal and pendency data across 144 districts in 21 states; and the XKDR Forum's study of Section 138 litigation patterns in Mumbai. Peer-reviewed scholarship from the *International Journal of Research Publication and Reviews,* the *International Journal of Law Management & Humanities,* and the *Indian Journal of Integrated Research in Law*[910] is additionally relied upon to contextualise the institutional causes of rising Section 138 litigation. The comparative analysis in Part 5 draws on the statutory law of England and Singapore and is limited to assessing the structural preconditions under which civil enforcement can substitute for criminal liability.

3. LEGISLATIVE HISTORY AND EVOLUTION OF SECTION 138

3.1 The Pre-1988 Position

The NI Act of 1881 consolidated pre-existing mercantile custom and English commercial law into a unified Indian statute.[11] Its drafters gave no thought to criminalising cheque dishonour — the payee's recourse was entirely civil, through Order XXXVII summary suits and attachment proceedings under the Code of Civil Procedure. For the economy of the 1880s, that framework was sufficient. For the economy of the 1980s, it was not.

3.2 The 1988 Amendment

The 1988 amendment, in force from 1 April 1989, inserted a carefully sequenced liability framework. Dishonour alone did not complete the offence; the payee was required to issue a written demand within 30 days of receiving the bank's memo of return, and the drawer's failure to make good the cheque amount within 15 days of that demand was what constituted the punishable act.[12] The provision thus built in an opportunity for payment, preserving a commercial rather than purely punitive character.

3.3 The 2002 Amendment

The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 made three significant changes to the original framework.[13] The cheque's validity window was halved,

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from six months to three. The maximum custodial sentence was doubled, from one to two years. And a procedural architecture was added: Sections 143–147 introduced the summary trial mandate (six-month disposal target), compoundability without court leave, and — through the 2018 Amendment Act[14] — a power to award interim compensation of up to 20% of the dishonoured cheque amount at an early stage of proceedings.

3.4 The 2015 Amendment

The 2015 Amendment resolved the jurisdictional controversy that *Dashrath Rupsingh Rathod v. State of Maharashtra*[15] had created by restricting filing to the payee's bank branch location. Section 142A was inserted to re-vest jurisdiction in courts where the payee's account-holding branch was situated, and to validate the thousands of transfers that had been ordered in the interim.[16]

The pattern across these amendments is consistent: each intervention targeted a specific procedural problem without ever confronting the underlying structural reality that the volume of Section 138 filings had grown to a scale that the magistracy court system was architecturally incapable of processing.

4. ANATOMY OF THE DOCKET EXPLOSION: CAUSES AND DIMENSIONS

4.1 The Scale of the Problem

The Law Commission's 213th Report counted more than 38 lakh cheque dishonour complaints pending across Indian courts as of October 2008, with Delhi's magistracy courts alone carrying 5.14 lakh of those.[17] When the Supreme Court opened suo motu proceedings in *Makwana Mangaldas Tulsidas v. State of Gujarat*[18] in March 2020, the national figure had declined only marginally to 35.16 lakh — still accounting for more than 15% of all pending criminal cases in district courts. DAKSH's district-level analysis quantified what that figure means in practice: across 144 districts in 21 states, Section 138 cases took an average of 395 days to reach disposal — more than three times the six-month target — with Gujarat's district courts averaging 3,608 days, approaching a decade.[19] Not one district anywhere in India was meeting the statutory timeline.

4.2 The Strict Liability Architecture

Section 138 operates as a provision of qualified strict liability. Proof of the prescribed sequence

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— a cheque drawn to discharge a legal liability, returned for want of funds, followed by a valid demand notice and non-payment within 15 days — is sufficient to constitute the offence; the complainant need not establish that the drawer intended to defraud or acted dishonestly.[20] The Supreme Court confirmed in *Modi Cements* that even a stopped cheque attracts the presumption of liability, and clarified in *Suman Sethi v. Ajay K. Churiwal*[21] that once dishonour and valid notice are established, the Section 139 presumption operates at full strength, placing the rebuttal burden squarely on the drawer.

4.3 Institutional Misuse: Cheques as Security Instruments

Among the less-examined contributors to Section 138 volume is the widespread institutional practice of accepting post-dated cheques as collateral for loan disbursements rather than as instruments of actual payment. The Supreme Court's holding in *Dalmia Cement Bharat Ltd. v. M/S Galaxy Traders & Agencies Ltd.*[22] — that security cheques fall within the provision's reach once dishonoured — institutionalises this conflation of security and payment instruments for the purposes of criminal prosecution.

The XKDR Forum's empirical study of Section 138 litigation in Mumbai documented this dynamic precisely: financial institutions accounted for 52% of all Section 138 complaints filed in that city, with 83% of defendants being individuals.[23] Peer-reviewed analysis corroborates this pattern, identifying the misuse of Section 138 as a coercive pressure tactic — distinct from genuine payment enforcement — as one of the principal structural causes of rising litigation under the provision.[24]

4.4 Collapse of the Summary Trial Regime

The summary trial framework of Chapter XXI, CrPC, as adapted for Section 138 by Section 143 of the NI Act, was designed to deliver disposal within six months. Magistrates convert summary proceedings to full summons trials — permissible under the second proviso to Section 143(1) when a sentence exceeding one year is contemplated — with a frequency and casualness that the Supreme Court described as routine and inadequately reasoned in *In re Expeditious Trial.*[25] Non-appearance of accused persons compounds the problem: courts have historically been reluctant to invoke coercive process under Sections 82–83 of the CrPC.[26]

4.5 The UPI Displacement Paradox

India's Unified Payments Interface processed over 131 billion transactions in 2023–24, with a combined value exceeding Rs. 199 lakh crore — a volume that makes it the largest instant

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payment network on the planet by transaction count.[27] The intuitive prediction would be that this migration of payments to digital rails would reduce the issuance of physical cheques and, with it, Section 138 filings. That prediction has not materialised.

The reason is distributional. UPI adoption is concentrated in urban consumer transactions. The segments that generate the bulk of Section 138 complaints — NBFC lending, microfinance, agricultural credit — continue to rely on post-dated cheques as the dominant security instrument, because their borrowers frequently lack the smartphone access, banking relationships, or digital literacy that UPI requires. The practical effect of the UPI revolution has therefore been to create a two-tier cheque ecosystem: urban commerce has moved on, while rural and semi-urban credit has not, concentrating Section 138 litigation precisely in the district courts that are most severely under-resourced.

This displacement is measurable in DAKSH's district-level pendency data: the highest average disposal times are found not in metropolitan courts but in the district courts of Gujarat, Rajasthan, and Bihar, where NBFC and microfinance penetration is deepest and judicial infrastructure is most strained.[28]

4.6 The Limitation Act Trap

Section 142 of the NI Act imposes a 30-day filing window running from the accrual of the cause of action. The Supreme Court held in *Saketh India Ltd. v. India Securities Ltd.*[29] that this limitation is not merely procedural but jurisdictional: courts have no power to take cognizance of a complaint filed outside it, and the condonation proviso is strictly construed with no general entitlement to relief. Unrepresented complainants who allow the period to expire while pursuing informal negotiation discover too late that the filing window has closed. The resulting applications for condonation, revisions, and appeals add to the courts' workload without advancing the substantive dispute.

4.7 Multiplicity of Proceedings and Forum Shopping

The coexistence of civil and criminal remedies for cheque dishonour creates a multiplicity dynamic that adds systemic friction without proportionate justice gain. The jurisdiction framework that emerged from *K. Bhaskaran v. Sankaran Vaidhyan Balan,* permitting complainants to select among up to five territorial forums, generated a well-documented pattern of forum shopping that *Dashrath Rupsingh Rathod* sought to close in 2014.[30] The jurisdictional correction triggered a mass transfer of pending complaints that introduced its own wave of procedural delay.

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5. THE DECRIMINALISATION DEBATE: PROMISE, PERIL, AND COMPARATIVE PERSPECTIVE

5.1 The 2020 Ministry of Finance Proposal

In June 2020, the Ministry of Finance circulated a consultation paper proposing the removal of criminal liability from a range of minor economic offences across 19 statutes, Section 138 of the NI Act among them.[31] The stated aims were to improve the investment climate, reduce the chilling effect of criminal risk on commercial activity, and relieve judicial pendency by removing a substantial portion of docket load from the magistracy courts. The proposal met immediate and sustained opposition. The Bar Councils of Delhi, Maharashtra, and Goa argued that decriminalisation would strip the provision of its deterrent force.[32] The Indian Banks' Association, representing the institutions that most heavily rely on the provision's coercive leverage, opposed it on the ground that the criminal sanction was essential to practical credit enforceability.[33]

5.2 Comparative Perspectives: England and Singapore

The decriminalisation debate in India has suffered from insufficient engagement with comparative experience. Two common-law jurisdictions with developed commercial cultures and historically significant cheque use offer instructive contrasts.

English law, through the Fraud Act, 2006, reserves criminal liability for cheque-related conduct only where there is a dishonest false representation.[34] Ordinary dishonour caused by insufficient funds, absent such deception, is a civil matter resolved through the county court system under the County Courts Act, 1984, with summary judgment available under CPR Part 24[35] — a procedure capable of yielding a binding court order within weeks for an undisputed claim. The critical precondition is institutional: English civil courts function with a reliability and execution capacity that makes a civil judgment a genuinely coercive instrument.

Singapore's framework under the Bills of Exchange Act (Cap. 23)[36] similarly treats dishonour as a civil matter in the absence of proven fraudulent intent. The Small Claims Tribunals Act[37] provides a fast-track recovery mechanism for claims below SGD 20,000 with disposal timelines of four to eight weeks. Again, the operative condition is the efficiency of the civil enforcement infrastructure — a condition that India's civil courts, carrying a combined pendency of over four crore cases, cannot presently satisfy.

The comparative lesson is precise and uncomfortable for decriminalisation advocates: removing criminal liability for cheque dishonour is a viable policy only in a jurisdiction where

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civil courts can deliver timely and enforceable monetary remedies. India is not, as yet, that jurisdiction. Decriminalisation in the Indian context would not resolve the pendency crisis — it would transfer it, while simultaneously eliminating the deterrent function that keeps the volume of wilful defaults manageable.

5.3 The Case for Decriminalisation

The arguments for decriminalisation are nonetheless coherent and deserve honest engagement. The first is moral: criminal imprisonment for commercial payment default is a disproportionate sanction in a legal system that reserves that consequence for conduct involving genuine moral culpability. The Supreme Court itself acknowledged this dissonance in *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.,*[38] characterising Section 138 as a provision where the civil substance is dressed in criminal procedure. The second is economic: the prospect of criminal prosecution chills legitimate commercial transactions, particularly for smaller enterprises. The third is institutional: removing the 15–20% criminal docket load that Section 138 generates would free magistracy courts to address offences involving genuine public safety and criminal culpability — and would directly mitigate the Article 21 speedy trial violations that the pendency crisis produces, as identified in *Hussainara Khatoon v. Home Secretary, State of Bihar.*[39]

5.4 The Case Against Decriminalisation

The counter-arguments are, in this author's assessment, weightier. The fundamental error in the decriminalisation case is its diagnosis: it mistakes the volume of Section 138 filings for evidence that the provision is misconceived, when that volume actually reflects the provision's success.[40] Complainants file Section 138 complaints not because they enjoy criminal litigation but because the civil alternative — Order XXXVII suits, money recovery proceedings, CPC execution — is slower, more expensive, and less reliably coercive. Decriminalisation does not make the civil alternative faster or cheaper; it simply removes the criminal option and drives all complainants toward a civil system that is equally, if differently, congested.

The Supreme Court's analysis in *D. Vinod Shivappa v. Nanda Valliappa*[41] is instructive: the Court distinguished Section 138 from a general debt recovery mechanism precisely because it targets the person who issues a cheque knowing it will not be honoured — conduct that carries a moral dimension that civil sanctions cannot adequately address. Scholarly analysis of the provision's decriminalisation consistently reaches the same conclusion: the shift of burden from criminal to civil courts replicates rather than resolves the underlying systemic failure.[42][43]

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6. THE SUPREME COURT'S REFORMIST JURISPRUDENCE

6.1 Indian Bank Association v. Union of India (2014)

In the absence of adequate legislative reform, the Supreme Court has constructed an extensive architecture of procedural directions aimed at reducing Section 138 pendency. The foundational intervention is *Indian Bank Association v. Union of India,*[44] which mandated day-to-day hearing, permitted affidavit evidence in lieu of oral examination, and directed High Courts to issue practice directions implementing these standards at the Magistrate level.

6.2 Meters and Instruments Pvt. Ltd. v. Kanchan Mehta (2018)

In *Meters and Instruments Pvt. Ltd. v. Kanchan Mehta,*[45] the Court affirmed Section 138's compensatory primacy and significantly liberalised the compounding framework — directing that post-conviction settlement should ordinarily be permitted where the accused is willing to make full payment.

6.3 Surinder Singh Deswal v. Virender Gandhi (2019)

The constitutional validity of Section 143A's interim compensation power was settled in *Surinder Singh Deswal v. Virender Gandhi,*[46] where the Court held that compelling an accused to deposit a portion of the cheque amount at the trial stage is a legitimate procedural measure to prevent misuse of the process, not a violation of constitutional rights.

6.4 In re Expeditious Trial (2021)

The comprehensive *In re Expeditious Trial, 2021*[47] suo motu proceedings issued the most detailed systemic directions yet: mandatory reasons before summary-to-summons conversion; deemed service across related complaints arising from a single transaction; and a directive to utilise electronic service and video conferencing as default mechanisms.

6.5 Sanjabij Tari v. Kishore S. Borcar (2025)

The Court's most recent intervention, *Sanjabij Tari v. Kishore S. Borcar & Anr., 2025,*[48] added further operational mandates: a summary sheet filed with every complaint; UPI payment infrastructure in district court premises to facilitate early settlement; and dedicated High Court committees monitoring pendency and disposal on a monthly basis. The jurisprudential arc is clear — but so is its institutional ceiling. The Supreme Court can set directions; it cannot create courts, fund infrastructure, or compel the legislative reform that structural change requires.

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7. PROPOSED REFORMS: A STATUTORY MIDDLE PATH

7.1 Mandatory Pre-Litigation Mediation under the Mediation Act, 2023

India now possesses, for the first time, a dedicated statutory framework for pre-litigation mediation: the Mediation Act, 2023 (Act 32 of 2023).[49] The Act's provisions for compulsory pre-dispute mediation in commercial and civil matters, and the courts' power to channel pending proceedings into mediation at any stage, together provide the legislative vehicle for the most immediately implementable structural reform available for Section 138 pendency: making pre-litigation mediation mandatory for all cheque dishonour complaints involving amounts below Rs. 5 lakh.

A complainant who initiates mediation within 30 days of the cause of action accruing, and where mediation fails within the statutory 60-day window, would retain unimpaired access to Section 138 criminal proceedings, with the additional entitlement to enhanced interim compensation under Section 143A as an incentive for genuine engagement. This would divert a substantial proportion of the institutional NBFC and microfinance complaints — which dominate the low-value, high-volume end of Section 138 filings — to a faster and cheaper resolution mechanism, while preserving the criminal pathway as a genuine backstop for wilful default.

7.2 Value-Based Tiered Adjudication and Dedicated Section 138 Courts

A three-tier adjudicative framework calibrated to cheque value would address the volume problem at source. Cases involving amounts below Rs. 1 lakh would be channelled exclusively through Lok Adalats or the mandatory mediation framework. Cases between Rs. 1 lakh and Rs. 50 lakh would be triable summarily before dedicated Section 138 courts with hard hearing timelines. Cases exceeding Rs. 50 lakh — genuinely high-stakes commercial disputes — would sit before the Commercial Courts constituted under the Commercial Courts Act, 2015,[50] with the full procedural resources appropriate to their complexity.

Dedicated Section 138 courts — recommended in the Law Commission's 213th Report and never implemented — remain the single most effective structural intervention available. Subject-matter specialisation allows Magistrates to develop expertise in the recurring patterns of Section 138 litigation, reducing hearing time per case and improving disposal consistency.

7.3 Consolidated Proceedings with Compensatory Primacy

The most doctrinally coherent reform is a single consolidated proceeding before a Judicial Magistrate in which compensation to the complainant is the primary remedy and custodial

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punishment is reserved for cases of demonstrated wilful default. This approach — directly grounded in the Court's characterisation of Section 138 as primarily compensatory in *Meters and Instruments* and *P. Mohanraj* — would eliminate the perverse incentive for complainants to prefer the criminal forum for its coercive advantages. Compensation should encompass interest at the RBI-prescribed contractual rate, all litigation costs, and a punitive uplift in bad faith cases — addressing the anomaly noted in *N. Harihara Krishnan v. J. Thomas,*[51] where a successful complainant frequently recovers less in real terms than the original dishonoured amount after years of proceedings.

7.4 Mandatory Digital Service and Video Conferencing

Section 143 of the NI Act should be amended to explicitly authorise service of summons by email, registered mobile number, or verified WhatsApp communication, with a statutory presumption of service 48 hours after dispatch absent proof of failed delivery. Video conferencing for evidence recording — already normalised in Indian courts post-COVID and legally underpinned by the amended Evidence Act framework — should be the default mode for Section 138 proceedings, with physical hearing available only on application.

7.5 Judicial Impact Assessment Prior to Future Amendments

Every major amendment to Section 138 has generated unintended second-order consequences that required further legislative correction. This pattern of reactive legislation demands a structural remedy: mandatory Judicial Impact Assessment, using the NJDG-based methodology that DAKSH has developed,[52] should be required before any Bill affecting high-volume criminal provisions is tabled in Parliament.

8. CONCLUSION

Section 138 of the Negotiable Instruments Act, 1881 embodies a legislative design tension that four decades of amendments and judicial intervention have not resolved: a provision whose operational success is inseparable from its pathological consequences. Its strict liability architecture, low filing threshold, and criminal coercive force make it the most effective commercial deterrent in India's statute book. Those same features make it the largest single source of criminal court congestion in the country.

The Ministry of Finance's decriminalisation proposal misreads this tension. It treats the volume of Section 138 filings as evidence that the provision is broken, when it is actually evidence that

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the provision works — and that India's courts are not equipped to deliver on the rights that working provision generates. As the English and Singaporean experience confirms, removing criminal liability for cheque dishonour is viable only where civil courts can absorb the resulting caseload efficiently. India's civil judiciary, carrying over four crore pending cases, cannot. Decriminalisation would produce a new crisis, not resolve the existing one.

The path forward is structural: mandatory pre-litigation mediation under the Mediation Act, 2023 for low-value cases; a tiered adjudication model with dedicated Section 138 courts; consolidated proceedings that put compensation at the centre and reserve imprisonment for proven wilful default; electronic service as the statutory default; and a legislative practice of Judicial Impact Assessment before any further amendment. India's trial courts cannot indefinitely function as the country's default commercial debt recovery infrastructure. But India's commercial ecosystem equally cannot afford to surrender the only mechanism that makes post-dated cheques a reliable instrument of credit. The reform agenda must serve both imperatives simultaneously — and Parliament has deferred that task long enough.

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