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LEGAL CHALLENGES AND SYSTEMIC SHIFTS IN DIGITAL INSTRUMENT FRAUD UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT

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Abstract

This paper examines whether the migration of cheque-based payments from paper to image-based and fully electronic rails has altered the legal standard of dishonour under Section 138 of the Negotiable Instruments Act, 1881 (“NIA”), and whether the Act is adequate to address digital instrument fraud. It uses doctrinal analysis of the statute, Supreme Court and High Court precedent, and RBI regulatory instruments, and advances three propositions. First, the formal ingredients of Section 138 have remained constant, but their evidentiary foundations, causal attribution and mens rea implications have shifted materially in Cheque Truncation System (“CTS”) environments. Second, the presumptions under Sections 118 and 139 were calibrated for a paper world in which the drawer held the best evidence of authenticity. They operate inequitably where the decisive evidence lies in bank-controlled electronic logs. Third, the NIA contains no coherent allocation of liability among drawers, collecting banks, paying banks and clearing infrastructures, and it does not reach e-mandates or tokenised instruments at all. The paper concludes by proposing targeted amendments: a statutory typology of returns, an attribution-based safe harbour, electronic-record presumptions, a bank-cooperation duty, and an extension of the Chapter XVII offence to electronic payment mandates.

I. Introduction

The Negotiable Instruments Act, 1881 was enacted when the negotiable instrument was, in every material sense, a physical object. Sections 4, 5 and 6 define the promissory note, bill of exchange and cheque as written instruments, signed and delivered. The central doctrines of negotiability presuppose a chattel that travels through space and hands. These include transfer by delivery or endorsement, the holder in due course, presentment at the place of payment, and the discharge of parties by material alteration. The Act drew on English mercantile law, which the Bills of Exchange Act 1882 codified almost contemporaneously. For a century it

remained a civil-commercial statute concerned with the rights and liabilities of parties to an instrument.

Its character changed in 1988. The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 inserted Chapter XVII (Sections 138 to 142), converting the dishonour of a cheque for insufficiency of funds into a criminal offence. The object was to restore the cheque's credibility as a commercial payment instrument. Later amendments in 2002, 2015 and 2018 added summary trial, affidavit evidence, territorial jurisdiction rules, interim compensation and appellate deposits. Section 138 is now among the most heavily litigated penal provisions in India, and its dockets are a recurring subject of Supreme Court concern.

While the offence hardened, the payment infrastructure beneath it was transformed. MICR-based physical clearing gave way to image-based truncation under RBI's CTS, which was extended nationally by the middle of the last decade and operates under RBI oversight through NPCI. The RBI has since layered the Positive Pay System onto that architecture for cheques above prescribed value thresholds, and moved towards continuous clearing and settlement on presentation. Alongside cheques, recurring payments migrated to ECS, NACH and card- and UPI-based e-mandates under RBI's additional-factor-of-authentication framework, and the Reserve Bank has piloted a central bank digital currency. The 2002 amendment to Section 6 anticipated part of this shift by expressly recognising the "cheque in the electronic form" and the "truncated cheque." Section 138 itself, however, remains substantially as drafted.

The offence rests on three implicit assumptions. The first is a physical instrument, signed by the drawer, held by the payee and inspected by the drawee bank. The second is a bank whose recorded reason for non-payment reliably reflects the drawer's financial position. The third is a settlement cycle slow enough for the criminal process, with its notice-and-cure mechanism, to operate as a rough temporal analogue of the commercial relationship. Each assumption is now unstable, and this instability defines the problem the paper addresses.

The paper poses three questions. First, how do image-based clearing, electronic cheques and e-mandates alter the legal standard of dishonour and the operation of the presumptions in Sections 118 and 139? Second, how should liability be allocated, and what evidentiary standards should govern, when dishonour results from technical failure, cyber intrusion or digital forgery rather than deliberate default? Third, what statutory reform is required? The analysis proceeds in four stages: statutory evolution, liability gaps and evidence, jurisdictional and procedural bottlenecks, and finally specific legislative proposals.

II. Statutory Evolution and Legal Reinterpretation

A. Section 6 and the 2002 Amendment

Before 2002, the NIA's definition of a cheque was materially paper-bound: a bill of exchange drawn on a specified banker and payable on demand. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 added three Explanations to Section 6. Explanation I(a) defines a "cheque in the electronic form" as one drawn by using a computer resource and signed in a secure system with a digital signature (with or without biometrics) and an asymmetric crypto system, or with an electronic signature. Explanation I(b) defines a "truncated cheque" as one truncated during the clearing cycle, by the clearing house or by any bank, immediately on generation of an electronic image for transmission, substituting further physical movement. Explanation II defines a clearing house by reference to RBI management or recognition. Explanation III imports the Information Technology Act, 2000 definitions of "asymmetric crypto system," "computer resource," "digital signature" and "electronic form." Consequential amendments adjusted the provisions on presentment, banker protection and material alteration (Sections 64, 81 and 89, among others) to accommodate truncated cheques. Section 6, as amended, therefore already extends expressly to an electronic image of a truncated cheque and to a cheque in electronic form; the statutory text itself is not silent on the existence of these instruments, even though, as developed below, it says little about their evidentiary treatment.

The doctrinal significance is that Parliament proceeded by legal fiction rather than by re-engineering the instrument. In a truncated cheque, the instrument in law remains the paper cheque, and the image is its authorised electronic representation for clearing. The drawee bank does not inspect the physical instrument. It sees a digitally signed image and associated MICR data, and it verifies the drawer's signature against a stored specimen image. This is a new epistemic condition for the "unpaid" element of Section 138. When a cheque is returned, the reason is a product of machine-mediated and image-mediated review. Image quality, compression artefacts, presenting-bank capture errors and rule-based exception queues can each cause returns that reflect no change in the drawer's solvency.

The Act does not say what follows from this. It contains no rule on the evidentiary status of an image relative to the physical cheque in a Section 138 prosecution, and no rule identifying which participant bears the risk of an erroneous image. It also contains no provision for the preservation of electronic clearing records. Instead the statute relies on the assumption that a truncated cheque is "a cheque" for all purposes, which leaves many questions about the underlying technology unanswered.

B. The Legal Standard of Dishonour Under Section 138

The offence under Section 138 has well-settled ingredients: a cheque drawn on an account maintained by the drawer with a banker, for the discharge in whole or in part of a legally enforceable debt or other liability, presented within its period of validity, returned unpaid because the amount standing to the credit of the account is insufficient or exceeds the arrangement with the bank, followed by a written demand notice within thirty days of receiving information of dishonour and failure to pay within fifteen days of receipt of that notice. On the period of validity, a distinction should be drawn between the statute and banking practice: the Act's own explanation to Section 138 continues to specify a validity period of six months from the date on which the cheque is drawn, or the period of validity specified on the instrument, whichever is earlier, and Parliament has not amended that wording. RBI's banking regulations, however, direct banks to treat a cheque, draft or pay order as stale, and therefore not payable, if it is presented more than three months after the date of the instrument. This is a regulatory instruction to banks governing when they will honour presentment, not an amendment to the Act, and the two periods should not be conflated: a cheque presented after three but within six months may be refused payment by the paying bank under RBI's directions even though the Act's own validity language has not been shortened. The Supreme Court in *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.* (2000) 2 SCC 745 articulated the component acts constituting the cause of action, and the jurisprudence on notice and limitation is correspondingly detailed.

The Court has interpreted the dishonour ground with notable purposiveness. In *Modi Cements Ltd. v. Kuchil Kumar Nandi* (1998) 3 SCC 249, the Court declined to follow the narrower position taken in *Electronics Trade & Technology Development Corporation Ltd. v. Indian Technologists & Engineers (Electronics) Pvt. Ltd.* (1996) 2 SCC 739, holding that a stop-payment instruction does not automatically take a dishonoured cheque outside Section 138. The Court proceeded from the mischief that drawers could otherwise frustrate the provision by instructing their banks. *NEPC Micon Ltd. v. Magma Leasing Ltd.* (1999) 4 SCC 253 extended the offence to "account closed" returns, and *MMTC Ltd. v. Medchl Chemicals & Pharma (P) Ltd.* (2002) 1 SCC 234 confirmed that the drawer may still rebut liability at trial. *Laxmi Dyechem v. State of Gujarat* (2012) 13 SCC 375 reasoned that returns such as "signatures do not match," where they reflect the drawer's own conduct in frustrating payment, fall within the offence, because the mischief is the drawer's failure to ensure that the cheque will be honoured.

These authorities reveal a consistent judicial method. The words "insufficient" and "exceeds

arrangement” are read as shorthand for a wider concept: non-payment attributable to the drawer’s defaults or conduct. That method is helpful in the CTS context, but it also exposes a fault line. The interpretive logic of *Modi Cements* and *Laxmi Dyechem* depends on attributing non-payment to the drawer. A return for “image not clear,” a rejection generated by a presenting bank’s capture failure, an “insufficient funds” code produced by a wrongly applied lien or by delayed crediting of an inward NEFT or UPI transfer, or a timing mismatch produced by batch processing, are all forms of non-payment that cannot be so attributed. Read literally, the statute is silent on them. Read purposively, on the *Laxmi Dyechem* approach, they must be excluded unless the drawer’s conduct contributed. The correct standard in a digital environment is therefore causal attribution, and it should be stated in the statute, not left to inference from case law.

The concept of “arrangement” acquires new complexity as well. Sweep-in facilities, dynamic overdrafts, intra-day liquidity lines and automated fixed-deposit sweeps mean that “amount standing to the credit” is a fluid and time-sensitive quantity. When clearing is effected within hours rather than days, the timing of the debit and the timing of the credit sweep can determine whether an insufficiency exists at all. The statute contains no provision fixing the moment at which sufficiency is assessed.

There is also a subtler point on the running of the statutory periods. The thirty-day notice window runs from the payee’s receipt of information from the bank that the cheque is unpaid. In a CTS environment that information may reach the payee via SMS, e-mail, the presenting bank’s portal, or the return memo, at different times. The statute names no authoritative channel. This matters because Section 138’s proviso (b) makes the notice a condition precedent, and the drawer’s opportunity to cure depends on when it starts.

C. The Presumptions Under Sections 118 and 139 in Digital Settings

Section 118(a) presumes that every negotiable instrument was made or drawn for consideration, and Section 118(g) presumes that the holder is a holder in due course, subject to Section 58 (instruments obtained by fraud or unlawful means). Section 139 presumes that the holder of a cheque received it for the discharge, in whole or in part, of a debt or other liability. The Supreme Court has held that the Section 139 presumption extends to the existence of a legally enforceable debt (*Rangappa v. Sri Mohan* (2010) 11 SCC 441), that it is a rebuttable presumption of law to be displaced by the accused on a standard of preponderance of probabilities (*Hiten P. Dalal v. Bratindranath Banerjee* (2001) 6 SCC 16; *Kumar Exports v. Sharma Carpets* (2009) 2 SCC 513; *Basalingappa v. Mudibasappa* (2019) 5 SCC 418), and

that once signature on a cheque is admitted, the presumption operates even if the cheque was voluntarily handed over signed but otherwise blank (*Bir Singh v. Mukesh Kumar* (2019) 4 SCC 197).

The last proposition is the point of tension. *Bir Singh* proceeds from admitted signature. It treats the drawer's own acknowledgement of the signature as the foundational fact from which the presumption flows. In digital settings the foundational fact is often the very issue in dispute. A drawer who says that an electronic cheque was never executed by him, that the image presented was fabricated or altered, or that his digital signature credential was compromised, is not rebutting the presumption. He is contesting the fact on which the presumption depends. The correct legal approach is that the presumption under Section 139 does not dispense with proof of the foundational facts of execution and authenticity. It is not reasonable to suppose that the *Bir Singh* logic transfers without adaptation when a signature is a digital artefact and authenticity depends on cryptographic verification and audit trails.

The Indian Evidence Act, 1872 supplied specific electronic-record presumptions in Sections 85A to 85C, 88A and 90A. These have been carried forward, in corresponding form, by the *Bharatiya Sakshya Adhiniyam, 2023* ("BSA"), which came into force on 1 July 2024 and now governs the admissibility and presumption of electronic records, including the presumption of the authenticity of a secure electronic record and secure digital signature. The NIA does not integrate them. A complainant relying on an e-cheque should be required to establish the conditions of a "secure" record and signature before the presumptions of Sections 118 and 139 attach. Without that integration, courts risk a mismatch in which a rebuttable presumption is applied to an instrument whose electronic authenticity has not been shown.

A second problem is informational. In the paper world the drawer had the best access to evidence of what he did: the chequebook, the counterfoil, the correspondence. In the digital world the decisive evidence, including image files, hash values, transmission logs, authentication records and exception queues, sits with the presenting bank, the paying bank and the clearing infrastructure. The Section 139 presumption places the burden of rebuttal on the party with the least access to the necessary material. Some rebalancing is available through court-ordered production, under Section 94 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* ("BNSS"), corresponding to Section 91 of the Code of Criminal Procedure, but this is discretionary and slow. A statutory duty of bank cooperation would address the problem more directly (see Part V).

III. Gaps in Liability, Technical Failures, and Mens Rea

A. Glitch Versus Intent

Section 138 is often described as an offence of strict or near-strict liability, and Section 140 reinforces this reading by providing that it shall not be a defence that the drawer had no reason to believe, when he issued the cheque, that it might be dishonoured for the reasons stated in Section 138. The provision forecloses arguments about the drawer's expectation at the time of issue. It does not, on its language, address dishonour caused by events after issue that the drawer could not have foreseen or controlled, and it says nothing about dishonour produced by a bank's or infrastructure's error.

Technical failure can produce a Section 138 dishonour in at least three ways. In the first, the drawer's account is adequately funded but the paying bank's core banking system, clearing session or exception queue produces a return citing insufficiency, for example because of a stale balance, a failed sweep, a timed-out call to the account ledger or an erroneously applied hold. In the second, the return code is a technical one, such as image quality or session failure, and no reference to funds is made at all. In the third, the account has been depleted by a third-party cyber intrusion, so that a cheque genuinely issued by the drawer is dishonoured because unauthorised debits have removed the funds.

In the first case the actus reus fails. The cheque was not "returned unpaid because of insufficiency of funds" in fact, whatever the memo says. Section 146 makes the bank's slip prima facie evidence of the fact of dishonour, "unless and until such fact is disproved," so the presumption is rebuttable, and the drawer should be permitted to prove through the bank's own records that funds were available. The Supreme Court's insistence in *Meters and Instruments Pvt. Ltd. v. Kanchan Mehta* (2018) 1 SCC 560 that the offence is in substance a civil wrong given a penal remedy to ensure payment supports a court's readiness to entertain such a defence. It would be perverse to imprison a drawer for a bank's error. In practice, however, the drawer must obtain the electronic evidence himself, on a compressed timeline and against a presumption. The notice-and-cure mechanism provides a partial safeguard: if the drawer demonstrates the error within fifteen days, the payee can simply re-present the cheque within its validity. Presentation of the same cheque more than once is permitted, with a fresh cause of action on each dishonour (*MSR Leathers v. S. Palaniappan* (2013) 1 SCC 177). But the safeguard fails if the validity period has lapsed, if the payee is hostile, or if the drawer does not recognise the glitch as such.

In the second case, the statutory text does not cover the return. On the *Laxmi Dyechem* logic, which turns on the drawer's conduct, a purely technical return not attributable to the drawer

should not sustain prosecution. Yet the boundary is untidy, since the return code in a CTS environment may be a choice among a schedule of numeric codes assigned by an operator working under time pressure. The statute should draw the line, not the practices of individual banks.

The third case is the most difficult. A drawer whose account has been emptied by an intruder plainly did not intend to default, and Section 140 does not in terms reach the situation, since it addresses belief at the time of issue. Yet the offence as construed by the courts imposes a duty to maintain funds until the cheque is honoured, and it is unclear whether the intervening fraud is a defence. There is a strong argument that it is, at least where the drawer promptly reported the unauthorised transaction. RBI's 2017 circular on limiting customer liability in unauthorised electronic banking transactions provides for zero customer liability where the fraud is reported within three working days and requires the bank to credit the amount (shadow reversal) within ten working days of notification. A regulatory regime that requires the bank to restore the funds should not coexist with a criminal regime that treats the same funds as absent. The legal principle, that a person should not be criminally liable for a shortfall the law requires the bank to make good, needs statutory expression.

B. Digital Forgery, Alteration and the Evidentiary Standard

Digital forgery under CTS takes several forms. There is pre-capture physical alteration, such as chemical washing of the payee or amount, which is then imaged and clears as genuine. There is post-capture image manipulation, in which the digitally signed image is altered in transit or at an endpoint. There is duplicate presentation, in which the same cheque is presented as an image and again as a paper instrument or through a second channel. And there are fabricated instruments, printed or generated to resemble genuine cheques, presented as images. CTS-2010 standards address these risks through image-quality thresholds, mandatory security features, and the use of digital signatures and encryption within the clearing infrastructure, and the Positive Pay System adds a customer-side verification of key cheque details, currently for cheques of Rs.50,000 and above, with RBI leaving it to individual banks to consider making the check mandatory for cheques of Rs.5 lakh and above. But these are technical and regulatory controls, not legal rules of attribution.

Legally, a materially altered cheque is not the drawer's cheque. Section 87 provides that a material alteration renders the instrument void as against any party who has not consented to it, subject to a proviso protecting a holder in due course against alterations not apparent, and Section 89 protects a banker who pays in due course a cheque whose alteration is not apparent.

The consequences for Section 138 are direct: if the amount or payee has been fraudulently altered, the instrument presented is not one “drawn by” the accused for the purposes of the offence. The drawer’s defence is a defence on the merits of the offence, not merely a rebuttal of a presumption.

To prove alteration or forgery, the accused (or the complainant, in resisting the allegation) needs electronic evidence: the CTS image as captured, the image as transmitted, the hash values, the transmission and exception logs, and the specimen signature image on the paying bank’s system. Admissibility of such records was governed by Section 65B of the Indian Evidence Act until it was superseded, with effect from 1 July 2024, by Section 63 of the BSA, which now performs the equivalent function. *Anvar P.V. v. P.K. Basheer* (2014) 10 SCC 473 held that secondary electronic evidence is admissible only with a certificate under the corresponding provision. *Shafhi Mohammad*

v. State of Himachal Pradesh (2018) 2 SCC 801 relaxed the requirement where the party lacks control over the device, and a three-judge bench in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020) 7 SCC 1 restored *Anvar*, holding the certificate to be a condition precedent for secondary electronic evidence. It also recognised that where the certificate cannot be obtained from a person in control of the device, the party may seek the court’s directions for production and certification. This body of authority, developed under Section 65B, remains the interpretive backdrop against which Section 63 of the BSA now falls to be applied.

Section 63 of the BSA prescribes a certificate in two parts, one by the person in charge of the device and one by an expert, and requires the recording of a hash value. The improvement is genuine: hash-based integrity verification is precisely what is needed to resolve image-alteration disputes. But the framework presupposes that the certifying custodian is a party to the proceedings or is willing to certify. In bank-fraud disputes the custodians are the banks and the clearing infrastructure, which are neither complainant nor accused and have their own institutional interests in the outcome. *Arjun Panditrao* offers a route through court directions, but nothing compels the bank to preserve the relevant data pending trial, or to certify within a defined period. The proposal in Part V for a statutory preservation and certification duty targets this gap.

Section 145 of the NIA, permitting evidence on affidavit, and Section 146, presuming the bank’s slip prima facie evidence of dishonour, were designed for a paper world. They do not displace the certification requirement for electronic records, and they cannot substitute for expert forensic evidence on the integrity of an image.

C. Liability Allocation Among Banks, Clearing Infrastructure and Customers

The NIA's allocation of loss is partial and pre-digital. Section 31 obliges a drawee bank with sufficient funds to pay the cheque on demand, and it is liable in damages to the drawer for wrongful dishonour. Sections 85 and 89 protect a bank paying in due course. Section 131 gives statutory protection to a collecting banker who receives payment in good faith and without negligence. Beyond these, the common law of the banker-customer relationship supplies rules. The customer owes the bank a duty to draw cheques so as not to facilitate fraud and to notify the bank of forgeries once he knows of them (*London Joint Stock Bank v. Macmillan* [1918] AC 777; *Greenwood v. Martins Bank* [1933] AC 51), though the Privy Council in *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.* [1986] AC 80 refused to expand this into a general duty to check statements or to install internal fraud controls. The Supreme Court considered the position of forged cheques in *Canara Bank v. Canara Sales Corporation* (1987) 2 SCC 666. None of these authorities was developed with image-based clearing in mind.

The real loss-allocation regime for CTS sits outside the NIA, in RBI directions and in NPCI's clearing rules and procedural guidelines. As I understand the position, these operate through contractual indemnities and warranties among presenting and drawee banks, under which the presenting bank warrants image integrity and takes responsibility for its customer, while the drawee bank remains responsible for signature verification and for honouring or returning within the prescribed session. These allocate loss among banks. They do not allocate loss to or from the customer, and they do not connect to criminal liability under Section 138. For customers, the relevant instruments are RBI's Integrated Ombudsman Scheme, 2021, the framework on limiting liability in unauthorised electronic banking transactions (2017), the harmonised turnaround-time and compensation framework for failed transactions (2019), and consumer-protection remedies for deficiency in banking services.

The resulting structure has three defects. It is fragmented, because a single fraud may implicate the drawer, two banks and an operator under four different regimes. It is silent about the relationship between civil or regulatory loss allocation and criminal exposure, so that the same fraud may leave the drawer indemnified as a customer and prosecuted as an accused. And it depends on private and regulatory instruments rather than statute, so the drawer has no legislative entitlement to a defined process for attributing fault. As between an innocent drawer, an innocent payee, and negligent banks, the NIA does not say who should bear the loss.

IV. Jurisdictional and Procedural Bottlenecks

A. From Dashrath Rupsingh Rathod to Section 142A

The Supreme Court's decision in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (1999) 7 SCC 510 had treated the five constituent acts of the offence as together conferring territorial jurisdiction on any court within whose area any of them occurred. The consequence was that payees could file in courts convenient to them. In *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014) 9 SCC 129, a three-judge bench held that the offence is completed on dishonour, which occurs at the drawee bank's branch, so the complaint lies only before the court with territorial jurisdiction over that branch (applying Section 177 of the Code of Criminal Procedure). The judgment recognised the abuse potential of the Bhaskaran approach, in which drawers were dragged to distant fora, but its effect was to require large numbers of pending complaints to be returned for presentation elsewhere.

Parliament responded through an ordinance in 2015, replaced by the Negotiable Instruments (Amendment) Act, 2015, which inserted Sections 142(2) and 142A. Section 142(2)(a) provides that where the cheque is delivered for collection through an account, the offence is inquired into and tried by the court within whose local jurisdiction the branch of the bank at which the payee or holder in due course maintains the account is situated. Section 142(2)(b) provides that where the cheque is presented otherwise than through an account, jurisdiction lies where the drawer's branch is situated. An Explanation deems a cheque delivered for collection at any branch of the payee's bank to have been delivered at the branch where the payee maintains the account. Section 142A validated the transfer of pending cases and the retrospective operation of the new rule. In *Bridgestone India Pvt. Ltd. v. Inderpal Singh* (2016) 2 SCC 75, the Supreme Court upheld the operation of the 2015 amendments and addressed the treatment of pending complaints.

The amendment has a specific relevance for CTS and core banking. The deeming Explanation resolves the problem that cheques can be deposited at any branch of the payee's bank in a CBS environment, and it anchors jurisdiction at the payee's home branch. That is convenient for payees but, in practice, it places the burden of travel on drawers, and the pre-2015 mischief of distant fora persists in a legislatively sanctioned form. It is also difficult to reconcile with the reality that CTS clearing makes the physical location of both the presenting and drawee branches irrelevant to the transaction, since the image travels through a clearing grid. The rule anchors jurisdiction to a branch whose physical location has diminishing operational significance.

Moreover, the 2015 rule is silent as to instruments that are not cheques. E-mandate and NACH

dishonours, UPI AutoPay failures and CBDC-based payments have no branch-centred structure, and where dishonour of such instruments is sought to be prosecuted, questions of territorial jurisdiction cannot be answered by reference to Section 142(2).

B. Speed of Settlement and the Pace of Criminal Process

RBI's shift towards continuous clearing and settlement on presentation compresses the interval between presentment and return to hours. The criminal process moves in years. In the Supreme Court's own assessments, notably in *Indian Bank Association v. Union of India* (2014) 5 SCC 590 and the later suo motu proceedings *In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881* (2021), Section 138 complaints account for a very large share of pending magisterial cases across the country. Indian Bank Association issued directions on summons, including electronic service, on the contents of complaints, and on expeditious disposal, and Meters and Instruments added guidance on compounding and on the court's power to encourage settlement. The Law Commission's 213th Report (2008) had already recommended dedicated fast-track courts. Section 143 mandates summary trial and aspires to disposal within six months so far as practicable, but that aspiration is rarely met.

The mismatch has an evidentiary dimension that is specific to digital instruments. Electronic logs are subject to retention schedules, rotation and archival policies. Devices are replaced. Credentials are rotated. An allegation of image alteration made in year three of a prosecution may confront a bank that no longer retains the granular transmission logs, or a certifying officer who has moved on. The perishability of digital evidence is at odds with the duration of the criminal process, and paper-era timelines cannot be presumed to preserve it.

The BNSS, which recognises electronic modes for the service of summons and the conduct of proceedings, and the 2014 Indian Bank Association directions on e-mail service, are helpful but incomplete. They address the mechanics of the proceeding, not the preservation and production of digital evidence.

C. Interim Compensation Under Section 143A and Digital Fraud Disputes

Section 143A, inserted by the Negotiable Instruments (Amendment) Act, 2018, empowers the trial court to direct the drawer to pay interim compensation to the complainant not exceeding twenty per cent of the cheque amount, in a summary trial or summons case upon the accused's plea of not guilty, and in other cases upon framing of charge. The compensation is payable within sixty days, extendable for sufficient cause, and if the accused is acquitted the court may direct repayment with interest at the RBI bank rate. Section 148 complements it by

requiring an appellant against conviction to deposit at least twenty per cent of the fine or compensation. The Supreme Court held Section 143A to be prospective in *G.J. Raja v. Tejraj Surana* (2019) 19 SCC 469, and in *Surinder Singh Deswal v. Virender Gandhi* (2019) 11 SCC 341 treated the Section 148 deposit as the ordinary rule, to be departed from only for reasons. More recently, in *Rakesh Ranjan Shrivastava v. State of Jharkhand* (2024), the Supreme Court clarified that the word “may” in Section 143A(1) confers a discretion, not an automatic entitlement to interim compensation, and that the discretion must be exercised on a reasoned consideration of factors such as the strength of the complainant’s case and the accused’s circumstances, rather than mechanically in every case.

The efficacy of these provisions in digital fraud disputes is doubtful. Interim compensation is premised on the assumption that the prima facie case is strong and that the defence is a bare denial of liability. In a digital fraud case the defence is often a substantive contention that the instrument was forged, altered or generated without authority, and its evaluation requires forensic material that is not available at the stage at which Section 143A is invoked. An order for twenty per cent interim payment before authenticity is investigated may cause irreparable loss to a victim of fraud, and the refund mechanism is a weak remedy against an insolvent complainant. Conversely, a court reluctant to order compensation whenever fraud is pleaded may allow that plea to be used tactically to delay. A more calibrated scheme would tie the interim payment to a preliminary authenticity finding: undisputed authenticity should attract the ordinary rule, while a credible forensic dispute should result in payment into court instead of to the complainant. The discretionary reading confirmed in *Rakesh Ranjan Shrivastava* provides interpretive room for this approach, but express statutory guidance would be better.

V. Statutory Recommendations and Conclusion

A. Proposed Amendments

First, a statutory typology of returns. The Act should define a “financial return” (insufficiency of funds, exceeding arrangement, and, consistent with *Modi Cements* and *Laxmi Dychem*, stop-payment and account-closure attributable to the drawer) and a “technical return” (image, capture, session, system or clearing failure). It should provide that only financial returns found to be attributable to the drawer constitute dishonour for the purposes of Section 138. The schedule of return reasons should be prescribed by rules, in consultation with RBI, so that the criminal law does not depend on the operating codes of individual clearing arrangements.

Second, an attribution-based safe harbour. An Explanation to Section 138 should provide that

no offence is made out where the drawer establishes, on a preponderance of probabilities, that non-payment was caused by an error or failure of a bank, clearing house or payment system operator, or by an unauthorised debit or intrusion reported to the bank within the period prescribed under RBI's framework for limiting customer liability. This resolves the tension identified in Part III between regulatory restoration of funds and criminal treatment of the resulting shortfall, and it should be accompanied by a reference in Section 140 clarifying that it does not preclude such a defence.

Third, integration of electronic-record presumptions. Section 118 should be amended to provide that, for a cheque in electronic form or a truncated cheque, the presumptions of Sections 118 and 139 attach only upon proof of the conditions of a secure electronic record and signature under the BSA. It should also provide that an image presented through a recognised clearing house, accompanied by the certificate prescribed under Section 63 of the BSA, is presumed to be an accurate representation of the instrument unless the contrary is shown.

Fourth, a bank-cooperation and preservation duty. Upon receipt of a demand notice, or a notice from the drawer alleging alteration, forgery or system error, every bank and clearing operator in the transaction chain should be obliged to preserve the relevant electronic records, and to furnish, within a fixed period, a certificate under Section 63 of the BSA together with the hash values and logs. Failure should support an adverse inference and a regulatory penalty.

Fifth, a defined loss-allocation regime, allocating loss along the transaction chain by rule rather than by private contract: statutory presenting-bank warranties as to image integrity, drawee-bank responsibility for signature verification and technical return decisions, customer duties of timely notification, and expedited re-credit procedures, so that the civil and regulatory outcome can inform the criminal proceeding.

Sixth, extension of the offence to electronic mandates and digital tokens. Section 25 of the Payment and Settlement Systems Act, 2007 already creates a distinct offence for the dishonour of qualifying electronic fund transfer instructions for insufficiency of funds, but it has generated little jurisprudence and does not sit within the mature Chapter XVII architecture. A new Chapter (or a consolidating amendment) should extend the notice-and-cure structure to dishonour of verified e-mandates, that is, those authenticated under RBI's e-mandate framework, and should define the relevant venue by reference to the accounts of the payee and payer, since these instruments have no branch-of-presentment. Since the Finance Act, 2022 amended the Reserve Bank of India Act, 1934 to treat digital form as capable of constituting a bank note, provision should also be made for the treatment of programmable and

tokenised payments.

Seventh, procedural modernisation. Section 143A should be amended to make interim compensation conditional on a preliminary authenticity determination where forgery or alteration is credibly pleaded, with payment into court where authenticity is disputed. Sections 142 and 143 should provide for electronic filing, electronic service of process and forensic reference at an early stage. AI-driven fraud (synthetic or deepfake-authorised instruments, cloned signatures and automated credential attacks) should be addressed by a statutory presumption that instruments generated without the drawer's authority are not "drawn" by him, with concurrent criminal liability of the perpetrator under the forgery and cheating provisions of the Bharatiya Nyaya Sanhita, 2023 and Sections 66C and 66D of the Information Technology Act, 2000.

B. Conclusion

The research question asked how electronic payment frameworks alter the standard of dishonour under Section 138. The answer developed here is that they do so not by changing the statutory words but by dissolving the factual assumptions on which those words rest. Dishonour is now a machine-mediated event. The signature is an image or a cryptographic artefact. The decisive evidence sits with third parties. Settlement is nearly instantaneous while adjudication is slow. In that setting the judicial gloss of *Modi Cements* and *Laxmi Dyechem*, which reads Section 138 to require non-payment attributable to the drawer, needs to become an express statutory standard. The presumptions of Sections 118 and 139, correct for a paper world, require electronic authentication and reciprocal disclosure. The current jurisdictional scheme of Section 142(2), settled after *Dashrath Rupsingh Rathod*, does not fit instruments that have no branch. And interim compensation under Section 143A must be adapted to disputes in which the authenticity of the instrument itself is in issue.

The reforms proposed — a typology of returns, an attribution-based safe harbour, integrated electronic presumptions, a bank-cooperation duty, a loss-allocation regime, an extended offence for e-mandates and procedural modernisation — aim to preserve the deterrent purpose that motivated Chapter XVII while ensuring that its penal force falls on defaulting drawers and not on the victims of technological failure and digital fraud.