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# **CHEQUE BOUNCE LITIGATION UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT: A CRITICAL ANALYSIS OF PROCEDURAL INEFFICIENCIES AND THE NEED FOR REFORM**

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Kumar Kartikeya, PhD Scholar (Law), Research Scholar, Department of Law,  
NIMS, University

Dr Falak Bashir, Assistant Professor, Department of Law, NIMS University

## **ABSTRACT**

Cheque dishonor litigation under Section 138 of the Negotiable Instruments Act, 1881 constitutes a substantial portion of criminal litigation in India. While the provision was introduced to ensure financial discipline and enhance the credibility of negotiable instruments, its implementation has resulted in large-scale judicial backlog and procedural inefficiencies. The increasing reliance on criminal prosecution for recovery of civil debts has raised concerns regarding proportionality and misuse of legal processes.

This paper critically analyses the statutory framework, judicial interpretation, and practical challenges associated with cheque bounce cases. It incorporates recent judicial developments and empirical insights to argue for a balanced reform model emphasizing decriminalization, mediation, and technological integration.

**Keywords:** Cheque Bounce; Section 138; Negotiable Instruments Act; Criminal Liability; Judicial Backlog; Financial Discipline; Commercial Litigation; Legal Reform

## **1. Introduction**

The reliability of negotiable instruments is essential for sustaining commercial confidence in a modern economy. The legislative intent behind introducing penal provisions under Section 138 of the Negotiable Instruments Act, 1881 was to deter dishonour of cheques and promote financial accountability. By criminalizing cheque bounce, the legislature aimed to ensure that such instruments retained their credibility in business transactions.

However, over time, the provision has generated unintended systemic consequences. Cheque bounce cases today account for a significant portion of criminal dockets, particularly before magistrate courts. This has resulted in delays, increased litigation costs, and misuse of the provision as a coercive recovery mechanism rather than a deterrent tool.

## **2. Research Methodology**

This study adopts a doctrinal approach based on analysis of statutory provisions, judicial precedents, and scholarly writings. Primary sources include legislative texts and decisions of the Supreme Court of India and various High Courts, while secondary sources include Law Commission reports and academic commentaries.

Additionally, an empirical perspective has been incorporated by examining the volume and nature of pending cheque bounce cases. A comparative analysis with other jurisdictions further enhances the study by highlighting alternative legal approaches to cheque dishonor.

## **3. Legal Framework of Section 138**

### **3.1 Essential Ingredients**

To establish an offence under Section 138, it must be shown that the cheque was issued in discharge of a legally enforceable debt, dishonored due to insufficiency of funds, followed by issuance of a demand notice within 30 days, and failure to pay within 15 days. These procedural safeguards are designed to provide an opportunity for the drawer to rectify the default.

However, strict adherence to procedural requirements has led to technical litigation. Courts frequently deal with issues relating to limitation, validity of notice, and jurisdiction, often overshadowing the substantive objective of recovery.

### **3.2 Presumption under Section 139**

Section 139 introduces a reverse burden of proof, presuming the existence of a legally enforceable debt. This presumption significantly strengthens the complainant's case and reduces evidentiary hurdles.

The Rangappa v. Sri Mohan, (2010) 11 SCC 441, at ¶26, clarified that the presumption extends to the existence of legally enforceable liability. However, this shift from the traditional presumption of innocence has raised concerns regarding fairness in criminal jurisprudence.

## **4. Judicial Interpretation and Case Law**

The Supreme Court of India has consistently interpreted Section 138 in a manner that balances deterrence with practicality. In Damodar S. Prabhu v. Sayed Babalal H, (2010) 5 SCC 663, at ¶17, the Court encouraged compounding of offences to reduce litigation burden.

Further, in *Indian Bank Association v. Union of India*, (2014) 5 SCC 590, the Court issued directions to streamline procedures, including the use of affidavits and summary trials. These judicial interventions reflect an effort to address systemic inefficiencies.

### **4A. Recent Judicial Developments**

Recent decisions of the Supreme Court of India demonstrate a clear shift towards efficiency and practicality.

- In *Meters and Instruments Private Limited v. Kanchan Mehta*, (2018) 1 SCC 560, the Court emphasized that cheque bounce cases are primarily civil disputes and encouraged compounding.
- In *Kalamani Tex v. P. Balasubramanian*, (2021) 5 SCC 283, at ¶14, the Court strengthened the presumption in favour of the complainant.

- In *Triyambak S. Hegde v. Sripad*, (2021) 6 SCC 713, at ¶12, the Court clarified that mere denial is insufficient to rebut presumption.
- In *Sunil Todi v. State of Gujarat*, (2021) 11 SCC 486, at ¶21, it was held that even security cheques can attract liability.
- In *Sumeti Vij v. Paramount Tech Fab Industries*, (2021) 4 SCC 753, at ¶10, the Court restricted premature quashing of proceedings.

These rulings collectively aim to prevent delay tactics and strengthen the enforcement mechanism.

### **5. Empirical Perspective: Pendency and Systemic Impact**

Cheque bounce cases constitute a substantial portion of pending criminal cases in India. Various reports suggest that **over 20% of criminal cases before magistrate courts relate to Section 138 proceedings**, highlighting the scale of the issue.

This heavy caseload adversely affects judicial efficiency, delaying not only cheque bounce cases but also other criminal matters. The systemic burden underscores the urgent need for procedural and structural reforms.

### **6. High Court Perspective (Allahabad High Court Focus)**

The Allahabad High Court, being one of the largest High Courts, deals with a significant number of cheque bounce cases. It has consistently emphasized adherence to summary trial procedures and discouraged unnecessary adjournments.

The Court has also taken a cautious approach in exercising inherent powers under Section 482 CrPC, ensuring that cheque bounce proceedings are not quashed prematurely unless clear abuse of process is demonstrated. This reflects judicial restraint and respect for trial procedure.

### **7. Key Issues in Cheque Bounce Litigation**

The criminalization of cheque dishonor continues to raise concerns regarding proportionality. Treating a civil default as a criminal offence often leads to misuse of the

law as a coercive recovery tool.

Additionally, procedural delays, lack of infrastructure, and ineffective enforcement mechanisms further weaken the effectiveness of Section 138. The law, in its current form, struggles to balance deterrence with efficiency.

## **8. Suggestions and Reforms**

A multi-pronged reform approach is necessary. Partial decriminalization of minor cases can significantly reduce the burden on courts while preserving criminal liability for serious offences.

Further, mandatory mediation, establishment of special courts, and digitalization of proceedings can enhance efficiency. Strengthening execution mechanisms to ensure recovery is equally essential.

## **9. Discussion**

The present framework reflects a tension between deterrence and efficiency. While criminal sanctions were initially justified, their continued dominance has led to systemic inefficiencies.

A hybrid model combining civil remedies with limited criminal sanctions appears to be the most viable solution. Such an approach would maintain financial discipline while reducing judicial burden.

## **10. Conclusion**

Section 138 of the Negotiable Instruments Act, 1881, was enacted with the objective of ensuring financial discipline and enhancing the credibility of cheque-based transactions in commercial dealings. Over time, however, the provision has evolved beyond its intended deterrent purpose and has become a dominant mechanism for debt recovery, thereby blurring the line between civil liability and criminal sanction.

The exponential rise in cheque dishonour cases has placed an immense burden on the criminal justice system, particularly at the magistrate level, resulting in delays, procedural inefficiencies, and increased litigation costs. While judicial interventions by

the Supreme Court have attempted to streamline procedures and promote compounding, these measures have only partially addressed the structural challenges inherent in the system.

The continued criminalization of cheque bounce raises serious concerns regarding proportionality, fairness, and misuse of criminal law as a coercive tool. The reverse burden of proof under Section 139, although effective in strengthening the complainant's case, further complicates the balance between efficiency and the fundamental principles of criminal jurisprudence.

In this context, a paradigm shift is necessary. A hybrid framework that emphasizes civil remedies, mandatory pre-litigation mediation, and limited criminal liability for aggravated cases offers a more balanced and sustainable solution. Additionally, technological integration—such as e-filing, virtual hearings, and digital service of notices—can significantly enhance procedural efficiency.

Ultimately, meaningful reform must aim not only at reducing judicial backlog but also at restoring the original intent of the law—ensuring credibility in financial transactions without overburdening the criminal justice system. A calibrated and reform-oriented approach will be essential to achieve a fair, efficient, and modern dispute resolution mechanism in cheque dishonour litigation.

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